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CROWN OFFICE RULES.

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CROWN OFFICE RULES AND FORMS, 1886.

THE SUPREME COURT OF JUDICATURE ACTS,

AND

RULES OF THE SUPREME COURT, 1883,

RELATING TO THE

Practice on the Crown Side of the Queen's Bench Division.

INCLUDING

APPEALS FROM INFERIOR COURTS.

TABLES OF COURT FEES AND SCALES OF COSTS.

TOGETHER WITH

NOTES, CASES, AND INDEX.

BY FREDERICK H. SHORT,

CHIEF CLERK OF THE CROWN OFFICE.

LONDON:

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PREFACE.

After careful consideration as to how this edition of the Crown Office Rules may be made most practically useful to the profession at large, I have adopted the following plan, viz., that of pointing out, as each particular Rule comes under consideration, whether or not it is new, merely affirms the existing practice, is taken from some Act of Parliament, or, as frequently occurs, is imported from the Rules of the Supreme Court, directing in each instance attention to the source from whence it is derived. When the Rule is a reproduction of a statute, or of the former practice, references are made to the cases decided upon such statute or practice. References are also added wherever it seemed at all probable that they would aid in the application or interpretation of a Rule.

A distinction between civil and criminal proceedings on the Crown Side of the Queen's Bench Division was effected for the first time by the Judicature Act of 1873, in sections 19 and 47, dealing with appeals to the Court of Appeal; and the Rules of the Supreme Court, 1880 (Order LXII. r. 2), made this distinction still more marked by applying certain of those Rules, as far as applicable, to all civil proceedings on the Crown Side; and this mode of applying the Rules of the Supreme Court was continued by the Rules of 1883 (Order LXVIII. r. 2), and, however desirable it may appear

that a different arrangement should have been adopted, has been followed in the present Rules. This distinction makes it incumbent on the practitioner to consider carefully to which category his particular case belongs before determining under which set of Rules he should proceed.

With a view to the concentration of labour by rendering recourse to other sources of information as far as possible unnecessary, I have deemed it expedient to set out the Rules so applied in their appropriate places in the Crown Office Rules, subjoined to the Rules by which they are incorporated. I have also for the same reason thought it convenient to give, in an Addenda, Order LIX. of the Rules of the Supreme Court, 1883, which regulates the proceedings to be heard before Divisional Courts, and also such other Orders of the Supreme Court, and sections of the various Judicature Acts which either directly or indirectly affect the procedure of the Crown Side.

My best thanks are due to the Queen's Coroner and Attorney, for aid in the construction of the Index, a portion of the work upon which much care and trouble have been expended.

I have especially to express my grateful acknowledgments to Master Mellor for his kindness in revising my notes both before and after going to press.

To Mr. Muir-Mackenzie, Barrister-at-law, of the Middle Temple, I also desire to offer my thanks for a similar kindness in reading through the proof sheets, for many valuable suggestions, and much acceptable encouragement in my undertaking.

The valuable services rendered by these gentlemen fortify me in a confident hope that the book now presented for the consideration of the profession may not be without its usefulness.

I wish to avail myself of this opportunity of stating that I have been fortunate in securing the promise of Mr. Muir-Mackenzie's assistance in revising and editing a book on the Crown Office Practice which I prepared and had ready for the press more than ten years ago, but deferred publishing in the expectation of the early appearance of new Rules under the Judicature Acts. As new Rules have at length been issued, I have reason to hope that the publication of the work to which I have referred will not be much longer delayed.

FREDERICK H. SHORT.

Crown Office,
Royal Courts of Justice.
8th March, 1886.

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CROWN OFFICE RULES, 1886.

The following Orders and Rules may be cited as the Crown Office Rules, 1886. They shall come into operation on the 28th day of April, 1886, and shall also apply, so far as may be practicable (unless otherwise expressly provided), to all proceedings taken on or after that day in all matters then pending.

1. All existing rules or practice on the Crown side inconsistent with these Rules are hereby repealed, and the following Rules shall henceforth be in force. Rr. 1, 2. Repeal of existing rules.

The only written Rules on the Crown side, existing at the time of the passing of these Rules, except such as were made by the Court from time to time under the title of Regulæ Generales, were—

1. Rules under the Act 6 & 7 Vict. c. 20, issued in 1844.
2. Rules under the Act 20 & 21 Vict. c. 43.
3. Certain of the Rules of the Supreme Court of 1883, Order LIII. Part II. (Prerogative Mandamus), now repealed by these Rules, and Ord. LXVIII., and certain other Orders, by virtue of Rule 2 of that Order, applied, as far as applicable, to all civil proceedings on the Crown side, including mandamus and prohibition, and also *quo warranto* (see *post*, p. 278).

Order LXVIII. remains unrepealed.

2. No order or rule annulled by any former order shall be revived by any of these Rules, unless expressly so declared, and where no other provision is made by these Rules, the present procedure and practice remain in force. Non-revival of rules.

Same as Order LXXII., Rules 1 and 2.
See also s. 21 of the Judicature Act, 1875.

Rr. 3–5.

CUSTODY OF RECORDS.

Custody of records.

3. The Queen's coroner and attorney, and the master of the Crown Office, Queen's Bench Division, shall have the care and custody of the records and other proceedings on the Crown side.

From Crown Office Rules of 1844.

DATE OF PROCEEDINGS.

Date.

4. Every order and other proceeding on the Crown side shall be dated of the day of the week, month, and year on which the same was made, unless the Court or a Judge shall otherwise direct, and shall take effect accordingly.

Hitherto the Rules, writs and files of proceedings, &c., have borne date of the year of the reign of the Sovereign, and not of the calendar year.

AFFIDAVITS.

Application of rules.

5. Order XXXVIII. (Affidavits) of the Rules of the Supreme Court, 1883, shall as far as it is applicable, apply to all civil proceedings on the Crown side.

The following Rules shall apply to all proceedings on the Crown side.

Here, as in Rule 250 (motions), a dual form of provision has been applied to the same subject-matter. A distinction between civil and criminal proceedings on the Crown side was first in words introduced into the practice by Order LXII. of the Rules of the Supreme Court, 1880, and reproduced by Order LXVIII., r. 2, of the Rules of 1883. Before the Judicature Acts there existed no such distinction, and all proceedings on the Crown side were considered in a wide sense to be criminal or quasi criminal. It will be seen by this Rule that Ord. XXXVIII. (Affidavits) has been applied to all civil proceedings on the Crown side, in accordance with Order LXVIII., Rule 2, as far as it is applicable, and then the following series of rules mainly taken from the same Order, are made applicable to all proceedings on the Crown side. This would at first sight appear to render it necessary in dealing with affidavits

to stop to consider which of two sets of Rules would best apply. Practically this will not be found to be so, as all the Rules of Order XXXVIII., which are at all likely to come into use on the Crown side, are by this Rule applied to "all proceedings on the Crown side." Rr. 5–7.

As to what proceedings are civil and what are criminal, see *post*, pp. 86, 87, and p. 287.

6. Upon any motion or summons evidence may be given by affidavit; but the Court or a Judge may, on the application of either party, order the attendance for cross-examination of the person making any such affidavit. Evidence by affidavit.

Same as Order XXXVIII., Rule 1.

7. Affidavits used on the Crown side shall be intituled "In the High Court of Justice, Queen's Bench Division." Title.

Although Order XXXVIII. (Affidavits) was applied as far as applicable by the Rules of the Supreme Court of 1880, Rule 2 of that Order, *post*, p. 9, was not considered to be applicable to the practice on the Crown side as to entitling affidavits, and this Rule makes it clear.

Affidavits used in support of a motion to remove into or commence any proceeding in the Court, such as for a *certiorari* to remove an indictment or order of an inferior tribunal, or for an order *nisi* for a *mandamus*, or *habeas corpus* in a cause or matter not already in the Court, should be entitled only in the Court as provided by this Rule: *R.* v. *Cole*, 6 T. R. 640; *Ex parte Nohro*, 1 B. & C. 267; *R.* v. *Stretch*, 4 D. P. C. 30; *R.* v. *Justices of Warwickshire*, 5 D. P. C. 382. Followed by the Queen's Bench Division in *Ex parte Soper*, 19th March, 1883.

The affidavits made use of between the granting of an order nisi for any writ or process, the effect of which will be to bring a cause into the Court, and the making it absolute, such as to prove service of, or to show cause against it, may either be entitled in the cause or not; but it is more correct not to do so, as the proceeding at this stage does not in strictness acquire a title, although it may be described in the Crown Paper as *The Queen* v. *The Party called upon to show cause*, a course adopted merely for the sake of identification. The Order of the Court is drawn up without a title, and the affidavits ought to be in the same form.

After an order has been made absolute, the effect of which is to bring a cause into Court, all affidavits, whether relating to the principal matter of the cause, or to any collateral motion, should be entitled both in the Court and in the cause.

In all cases on the Crown side, excepting appeals from inferior

Rr. 7–10.

Courts, the Queen is considered the prosecutrix, and the affidavits must be entitled "*The Queen* v. *A. B.*"

Where there are several defendants, and in case of an indictment removed into the Queen's Bench Division, if there be other defendants who have been tried in the inferior Court, the affidavits may be entitled "*The Queen* v. *A. B. and others;*" but when the proceedings relate to some of the defendants only, the most correct title will be "*The Queen* v. *A. B. and C. D. indicted with Others.*"

The christian names should be written at length in the title: *Masters* v. *Carter*, 4 D. P. C. 577.

Affidavits should not be entitled in more than one cause, although the same facts may be applicable to more than one; in such cases there should be separate affidavits in each case: *Anon.*, 3 Taunt. 469; *R.* v. *Missen*, 11 L. J. (N. S.) Q. B. 189, 1 D. P. C. (N. S.) 865.

But formal defects are no longer of so great importance as formerly; see Rule 19, *post*, and notes thereto.

Contents of affidavits.

8. Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted. The costs of every affidavit which shall unnecessarily set forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same.

Same as Order XXXVIII., Rule 3.

An affidavit by a lunatic should be supported by evidence of his capacity to make one: *Spittle* v. *Walton*, 11 Eq. 420.

As to where affidavit of oppressive length, see *Hill* v. *Hart-Davis*, 26 Ch. D. 470 C. A. And see also Order LXV., Rule 27 (20), *post*, p. 147.

Before whom sworn.

9. Affidavits sworn in England shall be sworn before a judge, district registrar, commissioner to administer oaths, first or second class clerk in the Crown Office Department, or officer empowered under the Rules of the Supreme Court to administer oaths.

Taken from Order XXXVIII., Rule 4, and adding the first and second-class clerks in the Crown Office, the officers empowered by Order LXI., Rule 5, are every master and every first and second-class clerk in the Filing and Record Department.

Commissioner to

10. Every commissioner to administer oaths shall express

the time when, and the place where, he shall take any affidavit or recognizance; otherwise the same shall not be admitted to be filed without the leave of the Court or a Judge; and every such commissioner shall express the time when, and the place where, he shall do any other act incident to his office. Rr. 10–12. state time and place.

Taken from Order XXXVIII., Rule 5, omitting words which have no application on the Crown side.

11. All affidavits, declarations, affirmations, and attestations of honour in causes or matters depending on the Crown side may be sworn and taken in Scotland or Ireland or the Channel Islands, or in any colony, island, plantation, or place under the dominion of Her Majesty in foreign parts, before any Judge, Court, notary public, or person lawfully authorised to administer oaths in such country, colony, island, plantation, or place respectively, or before any of Her Majesty's consuls or vice-consuls in any foreign parts out of Her Majesty's dominions; and the Judges and other officers of the High Court shall take judicial notice of the seal or signature, as the case may be, of any such Court, Judge, notary public, person, consul, or vice-consul, attached, appended, or subscribed to any such affidavits, affirmations, attestations of honour, declarations, or to any other document. Sworn out of England.

Taken from Order XXXVIII., Rule 6, with slight verbal alterations. 15 & 16 Vict. c. 86, s. 22.

As to the reception of affidavits sworn before a notary public out of her Majesty's dominions, see *De Leon* v. *Hubbard*, W. N. (1883), 197; *Cooke* v. *Wilby*, 25 Ch. D. 769; *Brittlebank* v. *Smith*, 50 L. T. 491; *Cooper* v. *Moon*, W. N. (1884), 78.

12. Every affidavit shall be drawn up in the first person, and shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may be shall be confined to a distinct portion of the subject. Every affidavit shall be written or printed bookwise. No costs shall Form of affidavit.

Rr. 12–17. be allowed for any affidavit or part of an affidavit substantially departing from this Rule.

Same as Order XXXVIII., Rule 7.

Description and abode of deponent.

13. Every affidavit shall state the description and true place of abode of the deponent.

Same as Order XXXVIII., Rule 8.

The description "gentleman" alone is not sufficient: *Orde, In re*, 24 Ch. D. 271, 52 L. J. Ch. 832; nor is "articled clerk," without saying to whom or in what profession: *R.* v. *Reeve*, 4 Q. B. 211.

Several deponents.

14. In every affidavit made by two or more deponents the names of the several persons making the affidavit shall be inserted in the jurat, except that if the affidavit of all the deponents is taken at one time by the same officer it shall be sufficient to state that it was sworn by both (or all) of the "above-named" deponents.

Same as Order XXXVIII., Rule 9.

Filing.

15. Every affidavit used on the Crown side shall be filed in the Crown Office Department of the Central Office. There shall be indorsed on every affidavit a note showing on whose behalf it is filed, and no affidavit shall be filed or used without such note, unless the Court or a Judge shall otherwise direct.

From Order XXXVIII., Rule 10.

Parties using affidavits on the Crown side should be careful to observe the direction where to file the affidavits. Much trouble and inconvenience is frequently caused by affidavits being filed in the wrong department.

Scandalous matter.

16. The Court or a Judge may order to be struck out from any affidavit any matter which is scandalous, and may order the costs of any application to strike out such matter to be paid as between solicitor and client.

Same as Order XXXVIII., Rule 11.

Alteration or interlineation in jurat.

17. No affidavit having in the jurat or body thereof any interlineation, alteration, or erasure shall without leave of the Court or a Judge be read or made use of in any matter

depending in Court unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the officer taking the affidavit, or if taken at the Crown Office Department, either by his initials or by the stamp of that office, nor in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are re-written and signed or initialed in the margin of the affidavit by the officer taking it. Rr. 17–19.

Same as Order XXXVIII., Rule 12.

Formerly no interlineation or erasure was allowed in the jurat: Reg. Gen. Mich. Term, 37 Geo. 4; Reg. Gen. H. T. 1853, Rule 140; *Chambers* v. *Barnard*, 9 D. P. C. 557; *Williams* v. *Clough*, 1 A. & E. 376.

18. Where an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate or blind, the officer shall certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent made his signature in the presence of the officer. No such affidavit shall be used in evidence in the absence of this certificate, unless the Court or a Judge is otherwise satisfied that the affidavit was read over to and appeared to be perfectly understood by the deponent. Illiterate or blind deponent.

Same as Order XXXVIII., Rule 13.

The statement of a managing clerk that he had read over and explained an affidavit to an illiterate person has been held to be insufficient: *Re Longstaff*, W. N. (1884), 216.

19. The Court or a Judge may receive any affidavit sworn for the purpose of being used in any cause or matter, notwithstanding any defect by misdescription of parties or otherwise in the title or jurat, or any other irregularity in the form thereof, and may direct a memorandum to be made on the document that it has been so received. Reception of affidavits notwithstanding defect.

Same as Order XXXVIII., Rule 14.

Formerly an erroneous title or defect in the jurat was fatal not only to the affidavit itself, but to any application founded upon such an affidavit, see *R.* v. *Bloxam*, 6 Q. B. 528, 14 L. J., Q. B. 13;

Rr. 19–25.

R. v. *Norbury*, 6 Q. B. 534, 15 L. J., Q. B. 264; the cases referred to in the note to Rule 7, *ante*, p. 3, and many others.

Stamping and use of office copies.

20. In cases in which by the present practice an original affidavit is allowed to be used, it shall before it is used be stamped with a proper filing stamp, and shall at the time when it is used be delivered to and left with the proper officer in Court or in Chambers, who shall send it to be filed. An office copy of an affidavit may in all cases in which a copy is admissible be used, the original affidavit having been previously filed, and the copy duly authenticated with the seal of the office.

Same as Order XXXVIII., Rule 15, with the addition of the words "in which a copy is admissible."

Not to be sworn before solicitor for the party;

21. No affidavit shall be sufficient if sworn before the solicitor acting for the party on whose behalf the affidavit is to be used, or before any agent or correspondent of such solicitor, or before the party himself.

Same as Order XXXVIII., Rule 16.

or before partner or clerk.

22. Any affidavit which would be insufficient if sworn before the solicitor himself shall be insufficient if sworn before his clerk or partner.

Same as Order XXXVIII., Rule 17.

When not filed in specified time.

23. Where a special time is limited for filing affidavits, no affidavit filed after that time shall be used, unless by leave of the Court or a Judge.

Same as Order XXXVIII., Rule 18.

Affidavit to be sworn before application.

24. Except by leave of the Court or a Judge no order made ex parte in Court founded on any affidavit shall be of any force, unless the affidavit on which the application was made was actually made before the order was applied for, and produced or filed at the time of making the motion.

Same as Order XXXVIII., Rule 19.

Affidavits in answer

25. Upon motions founded upon affidavits, either party

may apply to the Court or a Judge for leave to make additional affidavits upon any new matter arising out of the affidavits of the opposite party; but no additional affidavits shall be used except such leave shall have been first obtained. Rr. 25–27. to new matter.

C. L. P. Act, 1854, s. 45.

The proper time to apply for leave is when the *new matter* has been brought before the Court upon the argument: *Hayne* v. *Robertson*, 24 L. J., C. P. 155, 16 C. B. 494; *Swinfen* v. *Swinfen*, 26 L. J., C. P. 97, 1 C. B., N. S. 364.

26. No person shall be allowed to show cause against an order nisi, unless he shall have previously obtained office copies of such order and of the affidavits upon which it was granted. Office copies to be taken before showing cause.

See *R.* v. *Carttar*, 1 L. M. & P. 274; *R.* v. *Rotheram*, 12 L. J., M. C. 18.

This Rule does not affect justices showing cause by affidavit as by 35 & 36 Vict. c. 26, s. 2, whenever the decision of any justice is called in question in a Superior Court by rule to show cause or other process upon an *ex parte* application, such justice may make and file an affidavit in answer without being required to pay any fee in respect of filing, and by s. 3 the Court must take into consideration the matters set forth in such affidavit.

27. Affidavits of service shall state when, where, and how and by whom, such service was effected. Affidavits of service.

For Forms of Affidavits of Service see App. pp. 248—251.

The Rules of Order XXXVIII. not embraced in the foregoing, and which are applied to all civil proceedings on the Crown side, are subjoined.

ORDER XXXVIII.

Order XXXVIII. rr. 1, 2.

I.—Affidavits and Depositions.

1. (*On motions, &c. See r. 6, ante, p. 3.*)

2. Every affidavit shall be intituled in the cause or matter in which it is sworn; but in every case in which there are more than one plaintiff or defendant, it shall be sufficient to state the full name of the first plaintiff or Title of affidavits.

Order XXXVIII. rr. 2–12.

defendant respectively, and that there are other plaintiffs or defendants, as the case may be; and the costs occasioned by any unnecessary prolixity in any such title shall be disallowed by the taxing officer.

See notes to C. O., r. 7, *ante*, p. 3.

3. (*What evidence to be proved. See C. O., r.* 8, *ante, p.* 4.)

4. (*Before whom to be sworn. See C. O., r.* 9, *ante, p.* 4.)

5. (*Time and place to be expressed.* See C. O., r. 10, *ante*, p. 4.)

6. (*Affidavits out of jurisdiction. Before whom to be sworn.* See C. O., r. 11, *ante*, p. 5.)

7. (*Form of affidavit.* See C. O., r. 12, *ante*, p. 5.)

8. (*Description and abode of deponent.* See C. O., r. 13, *ante*, p. 6.)

9. (*Form of jurat where more than one deponent.* See C. O., r. 14, *ante*, p. 6.)

Filing.

10. Every affidavit or other proof used in Admiralty actions shall be filed in the Admiralty Registry: every affidavit used in Probate actions shall be filed in the Probate registry: every affidavit used on the Crown side of the Queen's Bench Division shall be filed in the Crown Office Department: every affidavit used in a cause or matter proceeding in a District Registry shall be filed there: and every other affidavit used shall be filed in the Central Office. There shall be indorsed on every affidavit a note showing on whose behalf it is filed, and no affidavit shall be filed or used without such note, unless the Court or a Judge shall otherwise direct.

See C. O., r. 15, *ante*, p. 6.

11. (*Scandalous matter.* See C. O., r. 16, *ante*, p. 6.)

12. (*Interlineations, alterations, or erasures in jurat or body.* See C. O., r. 17, *ante*, p. 6.)

13. (*By illiterate or blind persons.* See C. O., r. 18, *ante*, p. 7.)

14. (*Defective affidavits may be received with leave.* See C. O., r. 19, *ante*, p. 7.)

15. (*Stamping and filing and use of office copies.* See C. O., r. 20, *ante*, p. 8.)

16. (*Not to be sworn before solicitor, or agent, or party.* See C. O., r. 21, *ante*, p. 8.)

17. (*Or before solicitor's clerk or partner.* See C. O., r. 22, *ante*, p. 8.)

18. (*Filed after time limited.* See C. O., r. 23, *ante*, p. 8.)

19. (*Affidavits to be made before ex parte application made.* See C. O., r. 24, *ante*, p. 8.)

19A. (*Consent of new trustee.*)

II.—Affidavits and Evidence in Chambers.

20. (*Notice in Chancery Division.*)

Affidavits previously used.

21. All affidavits which have been previously made and read in Court upon any proceeding in a cause or matter may be used before the Judge in Chambers.

22. (*Alterations in accounts.*)

Documents not to be annexed.

23. Accounts, extracts from parish registers, particulars of creditors' debts, and other documents referred to by affidavit, shall not be annexed to the affidavit, or referred to in the affidavit as annexed, but shall be referred to as exhibits.

Title on exhibits.

24. Every certificate on an exhibit referred to in an affidavit signed by the commissioner or officer before whom the affidavit is sworn shall be marked with the short title of the cause or matter.

Order XXXVIII. rr. 25–29.

III.—Trial on Affidavit.

Note.—The following Rules, 25 to 30, having been incorporated by Rule 5, *ante*, p. 2, are set out, but in practice they only apply to the proceedings in the Chancery Division, and do not apply to the procedure on the Crown side.

Plaintiff's affidavits.

25. Within fourteen days after a consent for taking evidence by affidavit as between the parties has been given, or within such time as the parties may agree upon, or the Court or a Judge may allow, the plaintiff shall file his affidavits and deliver to the defendant or his solicitor a list thereof.

Defendant's affidavits.

26. The defendant, within fourteen days after delivery of such list, or within such time as the parties may agree upon, or the Court or a Judge may allow, shall file his affidavits and deliver to the plaintiff or his solicitor a list thereof.

Affidavits in reply.

27. Within seven days after the expiration of the last-mentioned fourteen days, or such other time as aforesaid, the plaintiff shall file his affidavits in reply, which affidavits shall be confined to matters strictly in reply, and shall deliver to the defendant or his solicitor a list thereof.

Cross-examination of deponent.

28. When the evidence is taken by affidavit, any party desiring to cross-examine a deponent who has made an affidavit filed on behalf of the opposite party may serve upon the party by whom such affidavit has been filed a notice in writing, requiring the production of the deponent for cross-examination at the trial, such notice to be served at any time before the expiration of fourteen days next after the end of the time allowed for filing affidavits in reply, or within such time as in any case the Court or a Judge may specially appoint; and unless such deponent is produced accordingly, his affidavit shall not be used as evidence unless by the special leave of the Court or a Judge. The party producing such deponent for cross-examination shall not be entitled to demand the expenses thereof in the first instance from the party requiring such production.

Compelling attendance

29. The party to whom such notice as is mentioned in the last preceding Rule is given shall be entitled to compel

the attendance of the deponent for cross-examination in the same way as he might compel the attendance of a witness to be examined. Order XXXVIII. rr. 29, 30.

for cross-examination.

30. When the evidence under this Order is taken by affidavit, such evidence shall be printed, and the notice of trial shall be given at the same time after the close of the evidence as in other cases is by these Rules provided after the close of the pleadings: provided that other affidavits may be printed if all the parties interested consent thereto, or the Court or a Judge so order: provided also that this Rule shall not apply in the Probate Divorce and Admiralty Division to default actions *in rem*, or references in actions, or actions for limitation of liability, unless the Court or a Judge shall otherwise order. Printing of evidence and notice of trial.

CERTIORARI.

The writ of *certiorari* is a discretionary writ, except when moved for by the Attorney-General or his representative on behalf of the Crown, but when moved for by a party aggrieved by reason of excess or want of jurisdiction, so as to answer the same purpose as a writ of error, it ought to be treated as *ex debito justitiæ*: *R.* v. *Justices of Surrey*, L. R. 5 Q. B. 466.

28. Every application for a writ of certiorari, or for an order to remove an indictment found at the assizes into the Queen's Bench Division, at the instance of any person other than the Attorney-General on behalf of the Crown, shall, during the sittings, be made to a Divisional Court of the said Division by motion for an order nisi to show cause, and in the vacation or when there is no sitting of a Divisional Court to a Judge at Chambers for a summons to show cause; Provided that where, from special circumstances, the Court or a Judge may be of opinion that the writ should issue forthwith, the order may be made absolute, or an order be made in the first instance, either ex parte or otherwise, as the Court or Judge may direct. R. 28. Motion for certiorari.

This Rule is new, but affirms the existing practice, except that it provides that the application may be made at Chambers during the

Rr. 28, 29.

sittings if no Divisional Court be actually sitting, and contemplates the removal of indictments from the Assizes without the issuing of a writ of *certiorari*, rendered unnecessary by reason of the Judicature Act, 1873, ss. 16 and 29, *post*, pp. 281, 284: *R.* v. *Dudley and Another* 14 Q. B. D. 273; *S. C.* 54 L. J., M. C., 32. Under 5 & 6 Will. & M. c. 11, s. 2, and 5 & 6 Will. 4, c. 33, an application for a *certiorari* to remove an indictment could, in term time, only be made by counsel in open Court. And a direction by the Court, 14th June, 1877, extended this practice of moving in Court to the sittings under the Judicature Acts. So also, by the practice, applications for writs of *certiorari* for convictions and orders and other proceedings of inferior tribunals have been required to be made during the sittings to a Divisional Court.

Under this Rule all applications for writs of *certiorari*, whether to remove indictments or other proceedings (except at the instance of the Attorney-General), must, during the sittings, be made to a Divisional Court, unless there be no Divisional Court sitting, in which case, and in vacation, the application may be made at Chambers. Formerly it was not competent for a party to move in person for a writ of *certiorari*, but of late years the Court has, in more than one instance, allowed a party interested so to move.

For Forms of Summonses at Chambers, see Nos. 5 & 15, *post*, pp. 167, 173.

Grounds for removal of indictment.

29. No indictment, except indictments against bodies corporate not authorised to appear by solicitor in the Court in which the indictment is preferred, shall be removed into the Queen's Bench Division either at the instance of the prosecutor or of the defendant (other than the Attorney-General acting on behalf of the Crown), unless it be made to appear to the Court or a Judge by the party applying that a fair and impartial trial of the case cannot be had in the Court below, or that some question of law of more than usual difficulty and importance is likely to arise upon the trial, or that a view of the premises in respect whereof any indictment is preferred, or a special jury, may be required for a satisfactory trial of the same.

Taken from the 16 & 17 Vict. c. 30, s. 4.

It should be noted that there can be no special jury in cases of treason or felony by 6 Geo. 4, c. 50, s. 30 (*R.* v. *Mayne*, 32 W. R. 95), and that therefore the removal, on the ground that a special jury may be required, can only apply to an indictment for misdemeanor. A body corporate cannot appear by solicitor to any indictment except an indictment found in the Queen's Bench Division, or removed into it by writ of *certiorari*: see *R.* v. *Birmingham and Gloucester Railway Company*, 3 Q. B. 223; 9 C. & P. 478; *R.* v.

Mayor, &c., of Manchester, 7 E. & B. 453. And therefore if a corporate body be indicted at Assizes or Quarter Sessions, or at the Central Criminal Court, or any other Criminal Court except the Queen's Bench Division, the prosecutor must remove the indictment by *certiorari* before he can cause the corporate body to appear; and this by Rule 30 he is able to do without entering into the recognizance to pay the costs occasioned by such removal if he should be defeated. R. 29.

Fair and impartial trial.

A reasonable probability of partiality or unfairness in the Court below has been held a sufficient ground for the removal: *R.* v. *Webb*, 2 Str. 1068; *R.* v. *Hunt*, 3 B. & Ald. 444; *R.* v. *Penprase and Others*, 4 B. & Ad. 573; *R.* v. *Holden*, 5 B. & Ad. 347: see also *R.* v. *Palmer*, 5 E. & B. 1024, 2 Jur., N. S. 235; *R.* v. *Bell*, 8 Cox, C. C. 287. And also where paragraphs had been published in newspapers which were likely to prejudice the minds of the petty jurors (*R.* v. *Lever*, 1 W. W. & H. 35); and where indictment found at Oxford Sessions against two, one of them a member of the university, and exercising great influence at the place of trial, the other a son of an influential magistrate in the neighbourhood, and a placard had been exhibited and articles published (*Reban* v. *Trevor*, 4 Jur. 292); and where the number of jurors in a borough was small, and the defendant was intimate with many of them (*Garbett* v. *Ouseley*, 6 Jur. O. S. 193); and where the defendant was a magistrate, and had circulated amongst the other magistrates of the county an account of the charges to be brought against him (*R.* v. *Grover*, 8 D. P. C. 325); and where an indictment was found at sessions, and one of the magistrates was interested in the matter: *R.* v. *Jones*, 2 H. & W. 293. But the mere fact that the defendant was a magistrate and a member of the Bench where the indictment was to be tried was held not a sufficient ground (*R.* v. *Fellowes*, 4 D. P. C. 607); neither was the allegation of a strong prejudice entertained against a defendant by the chairman at sessions (*R.* v. *Jacobs*, 3 Jur. O. S. 999); nor the fact that the chairman of the Court was intimate with the father of the prosecutrix: *R.* v. *Renshaw*, 5 Jur. O. S. 801.

Difficult questions of law.

It is not sufficient to state generally that difficult questions of law may arise without showing any specific difficulty: *R.* v. *Joule*, 5 A. & E. 539; *S. C.*, 5 D. P. C. 435. See also *R.* v. *Harrison*, 1 Chit. R. 571 and notes; *R.* v. *Hodges*, 9 Jur. O. S. 665; *R.* v. *Morton*, 1 D., N. S. 543; *Clark* v. *Wellington*, 7 Jur. O. S. 44. And it is necessary to make out a stronger case for a removal, on the ground of legal difficulties from the Assizes or Central Criminal Court: *Anon.*, 1 Salk. 144; 1 Sess. Cas. 321; *R.* v. *Templar and Others*, 5 D. P. C. 249; *R.* v. *Morton*, *supra*. See also, *R.* v. *Josephs*, 8 D. P. C. 128; 1 W. W. & H. 419.

View.

The necessity for a view would of itself appear to be a sufficient ground: *R.* v. *Tradgeley and Others*, 1 Sess. Cas. 180.

Special jury.

The fact of a special jury being required has also of itself been decided to be a sufficient ground (*R.* v. *Fox*, 29th May, 1860, *per* Hill, J., after taking time to consider MS.); but a special jury cannot be had in treason or felony: see note, *supra*.

Rr. 29, 30.

Forms of *Certiorari*, Nos. 7, 8, pp. 168, 169.

Forms of Summons and Order for Removal from Assizes or Central Criminal Court, Nos. 5 and 6, pp. 167, 168.

Recognizance on removal of indictments.

30. No writ of certiorari for the removal of an indictment, or order to remove an indictment found at the assizes, shall be allowed by the Court to whom it may be directed, unless the person (other than the Attorney-General acting on behalf of the Crown and the prosecutor of an indictment against a body corporate) at whose instance it has been issued shall have entered into a recognizance by himself, if he is the prosecutor, with sufficient sureties, conditioned on the return of such writ to make up the record, and give notice of trial and proceed to trial of the indictment at the next assizes to be held for the county wherein the indictment was found, or if in London or Middlesex forthwith at the sittings of the High Court of Justice, and to pay the costs of the defendant subsequent to the removal of the indictment, if he be acquitted; and if the party removing is the defendant, until he shall have entered into a recognizance with sufficient sureties conditioned to appear and plead (and in cases of felony in open court) to the said indictment, and give notice of trial, and proceed to trial of the indictment at the next assizes to be held for the county wherein the indictment was found, or if in London or Middlesex forthwith at the sittings of the High Court of Justice, and personally to appear from day to day at the trial of such indictment, and if necessary in the Queen's Bench Division of the High Court of Justice, and not depart till he shall be discharged by the Court, and to pay the costs of the prosecution subsequent to the removal of the indictment, if the defendant or any of the defendants if more than one be convicted.

This Rule embodies the joint provisions of the Statutes 5 & 6 Will. & M. c. 11, s. 2; 8 & 9 Will. 3, c. 33, s. 2; 5 & 6 Will. 4, c. 33; 16 & 17 Vict. c. 30, s. 5; and of a Reg. Gen. of Easter Term, 16 Vict. 1852; and in cases where there are more than one defendant affirms the usual practice as stated in *R.* v. *Foulkes*, 1 L. M. & P. 720, 20 L. J., M. C. 196; and *R.* v. *Jewell*, 7 E. & B. 140, 26 L. J. Q. B. 177.

Forms Nos. 10 and 11, *post*, p. 170.

Under 16 & 17 Vict. c. 30, s. 5, it has been held that a similar

provision did not apply to the prosecutor of an indictment against a body corporate: *R.* v. *Mayor, &c., of Manchester*, 7 E. & B. 453; 26 L. J. M. C. 65. Rr. 30, 31.

Where a Judge at Chambers had granted a *certiorari* on the application of one of several defendants, all the facts having been laid before him, the Court would not afterwards interfere with his discretion: *R.* v. *Wilkes and Others*, 25 L. J. Q. B. 47.

But, where a defendant, who applied for the *certiorari*, was out on bail and another defendant was in custody, the Court laid the applicant under the terms that if the other did not consent the applicant should find bail for him: *R.* v. *Drake and Another*, 22 L. J. Q. B. 304.

In a case where the prosecutor obtained a *certiorari* and omitted to put into his recognizance the condition for the payment of costs, and the defendants were acquitted, it was held that the defendants were not entitled to costs: *R.* v. *Inhabitants of East Stoke*, 6 B. & S. 536.

When inhabitants of a parish, &c., or other large *quasi* corporate body, are required to give a recognizance, and it is impracticable for the whole body to enter into the recognizance, it is the practice to allow one of the body, on behalf of himself and the rest of the body, to acknowledge, see *R.* v. *Abergele* (*Inhabitants of*), 5 A. & E. 795, with such sureties as may be required.

There is authority to show that a corporate body cannot enter into a recognizance (Moore, 68), unless, indeed, it be by power of attorney, see *Cortis* v. *Kent Waterworks Company*, 7 B. & C. at p. 331; but in such cases, also, it is the practice to allow one of the members of the corporation, on behalf of himself and the other members of the corporation, to do the same. It has, however, been said that this is not a compliance with, but an evasion of, the enactment requiring the recognizance: see *R.* v. *Mayor, &c., of Manchester*, 7 E. & B. at p. 459.

31. If the person at whose instance any writ of certiorari for the removal of an indictment, or order to remove an indictment found at the assizes, shall have been awarded, shall not before the allowance thereof enter into a properly conditioned recognizance, the Court to which such writ or order may be directed shall proceed to the trial of the indictment, as if such writ or order had not been awarded. Certiorari not to be allowed in default of recognizance.

The "allowance" of the writ means by the person to whom it is directed: *R.* v. *Abergele* (*Inhabitants of*), 5 A. & E. 795; *R.* v. *Dunn*, 8 T. R. 217; *R.* v. *Jones*, 9 D. P. C. 504.

A *certiorari* to remove an indictment must be lodged with the proper recognizance, 2 Hawk. P. C. c. 27, s. 64, 6th Ed.; *R.* v.

Rr. 31-33.

Bothell, 1 Salk. 149, and before the jury is sworn: see 60 Geo. 3, c. 4, ss. 3 and 5; 2 Hawk. P. C. c. 27, s. 64, 6th Ed.; *R.* v. *Dixon*, 1 Salk. 150; *R.* v. *North*, 1 Salk. 144.

Recognizance to be returned with writ.

32. All recognizances to be entered into for the allowance of any writ of certiorari, or order to remove an indictment found at the assizes, or any writ of certiorari for the removal of any order, conviction, inquisition, or other proceeding removed thereby, shall be certified into the Queen's Bench Division with the writ of certiorari or order of removal.

This Rule merely provides for the due filing of the recognizance in the Queen's Bench Division, which is done at the Crown Office: see 5 Geo. 2, c. 19, s. 3.

Time in which application for certiorari for order of sessions, &c., to be made.

33. No writ of certiorari shall be granted, issued, or allowed to remove any judgment, order, conviction, or other proceeding had or made by or before any justice or justices of the peace of any county, city, borough, town corporate, or liberty, or the respective general or quarter sessions thereof, unless such writ of certiorari be applied for within six calendar months next after such judgment, order, conviction, or other proceeding shall be so had or made, and

Notice.

unless it be proved by affidavit that the party suing forth the same has given six days' notice thereof in writing to the justice or justices, or to two of them, if more than one, by and before whom such judgment, order, conviction, or other proceedings shall be so had or made, in order that such justice or justices, or the parties therein concerned, may show cause, if he or they shall so think fit, against the granting, issuing, or allowing such writ of certiorari.

This Rule is a reproduction of the provisions of 13 Geo. 2, c. 18, s. 5, and in substantially identical terms.

As to when *certiorari* will lie to remove orders or proceedings referred to in this Rule: see *R.* v. *Bolton*, 1 Q. B. 66. And where *certiorari* is taken away by statute, *Ex parte Hopwood*, 15 Q. B. 121; *The Colonial Bank of Australasia and Others* v. *Willan*, L. R. 5 P. C. 417.

For Forms of Notices, Affidavit of Service of Notice, Judge's Summons, Order and Writ of *Certiorari*: see Nos. 12 to 17, *post*, pp. 171, 173.

R. 33.

Indictment. Crown.

It has been decided that the statute from which this Rule is derived did not apply to indictments, *R.* v. *Battams*, 1 East, at p. 304, and that the Crown was not affected by it whether at the instance of the Attorney-General, *R.* v. *James*, 1 East, 303 n.; *R.* v. *Clace*, 4 Burr. 2458, or of any private individual prosecuting in the name of the Crown; see notes to Rule 36, *post*, and the cases there cited.

Time.

In cases where there has been an appeal to sessions, and the sessions has adjudicated thereon, the time runs from the making of the order at sessions, not from the date of the order appealed against: *R.* v. *Justices of Middlesex*, 5 A. & E. 626; *R.* v. *Boughey*, 4 T. R. 281; *Anon.*, Lofft, 544; *R.* v. *Morice*, 2 D. & L. 952.

It is sufficient if the *application* be made within the six months, consequently it is no objection that the *allowance* is not made within that time, *R.* v. *Abergele*, 5 A. & E. 795, and in a case at Chambers where a party attended with all necessary materials on the last day for making the application and left his papers with the judge's clerk and stated the nature of his application, he was held to be in time, although no judge was in attendance on that day, *R.* v. *Allen and Others*, 4 B. & S. 915; 33 L. J., M. C. 98; but in a previous case, under very similar circumstances, where the writ was issued on the last day, but the fiat, in consequence of no judge being in town on that day, was not signed till the day after, it was held to be too late: *R.* v. *Whitechapel*, 2 D. N. S. 964; 12 L. J., M. C. 85.

The Court could not, under the foregoing Act, further limit the time, *R.* v. *Justices of Brecknockshire*, 42 L. J., M. C. 135; nor enlarge the time, *R.* v. *Bloxam*, 1 A. & E. 386; *R.* v. *Cartworth*, 13 L. J., M. C. 28; but the Court or a Judge may do so in their discretion under these Rules, see Rule 297, *post*, p. 129, consequently the limit of time is not so important as formerly.

This Rule only applies to proceedings before justices, and there is no general rule of practice limiting the time for applying for writs of *certiorari*: see *R.* v. *Mayor, &c., of Sheffield*, L. R. 6 Q. B. 652; 40 L. J., Q. B. 247.

Notice.

The notice must state on the face of it that it is given by or on behalf of the party who will apply for the writ, and should specify who that party is: *R.* v. *Justices of Lancashire*, 4 B. & Ald. 289; *R.* v. *How and Others*, 11 A. & E. 159; 9 D. P. C. 501. It may be signed by the solicitor for the party applying, such party being named in the notice and the solicitor being named as such: *R.* v. *Abergele*, 5 A. & E. 795; *R.* v. *Justices of Lancashire*, 11 A. & E. 144; *R.* v. *Justices of Wilts*, 10 L. J., M. C. 25; 9 D. P. C. 524. If signed by the parties themselves, it must be signed by all. A notice signed by one churchwarden only, where the application was on behalf of the churchwardens and overseers, has been held insufficient: *R.* v. *Justices of Cambridgeshire*, 3 B. & Ad. 889. Should the person on whose behalf the notice has been given abandon the application, the writ cannot

Rr. 33, 34.

be granted to another without a fresh notice: *R.* v. *Justices of Kent*, 3 B. & Ad. 250. The six days must be reckoned exclusively of the first and inclusive of the last (Rule 294, *post*, p. 128), and before the order *nisi* is moved for: see *R.* v. *Justices of Glamorganshire*, 5 T. R. 279; *R.* v. *Justices of Cumberland*, 4 N. & M. 378; 1 H. & W. 16; *R.* v. *Goodenough*, 2 A. & E. 463. A notice that the Court would be moved on the first day of the next term or so soon after as the applicant could be heard and not served until that day was held bad, although the motion was not made until after the six days from the service, *R.* v. *Flounders*, 4 B. & Ad. 865; but a notice that the Court would be moved in six days from the giving of the notice, or so soon after as counsel could be heard, was held good: *R.* v. *Rose*, 3 D. & L. 359; 15 L. J., M. C. 6. The notice may be served on the justices to whom it is directed either personally or by leaving it at their residences with a servant, &c. If the application is for the purpose of removing an order made at sessions the affidavit must state that the justices served were present at the sessions when the appeal was heard, and were two of the justices by and before whom the order of sessions was made (Form No. 12, *post*, p. 171): see also *R.* v. *St. James, Colchester*, 2 L. M. & P. 314; 20 L. J., M. C. 203; *R.* v. *How and Others*, 11 A. & E. 159; *R.* v. *Cartworth*, 13 L. J., M. C. 26; 5 Q. B. 201; 1 D. & L. 837; *R.* v. *Rattislaw*, 5 Dow, 539; *R.* v. *Justices of Herefordshire*, 2 D. & L. 500; *R.* v. *Inhabitants of Darton*, 14 L. J., M. C. 41.

The omission of this statement cannot be cured by a subsequent affidavit: *R.* v. *Gilberdyke*, 5 Q. B. 207.

Time for filing special case from sessions.

34. No special case stated by a court of general or quarter sessions for obtaining the judgment or determination of the High Court upon any order or other determination of a court of general or quarter sessions shall be filed at the Crown Office Department after the expiration of six calendar months from the making of such order or determination, except by leave of the Court on special circumstances being shown, either before or after the expiration of such six months.

Sect. 40 of the Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), enacts that "A writ of *certiorari* or other writ shall not be required for the removal of any conviction, order, or other determination, in relation to which a special case is stated by a Court of general or quarter sessions for obtaining the judgment or determination of a Superior Court."

The object of this section may appear somewhat obscure, and no judicial light has as yet been thrown upon it. It may have been,

and probably was, for the purpose of evading the provision inserted in many Acts of Parliament restraining the issuing of a *certiorari* to remove any order or proceeding under the particular Act: see *R.* v. *Chantrell*, L. R. 10 Q. B. 587; 44 L. J., M. C. 94. With whatever object the section was passed, it had the effect of causing a difficulty as to the process for bringing the proceedings into the Queen's Bench Division. A *certiorari* was rendered unnecessary, and no machinery was provided in its stead. To meet this difficulty the Court, in a case where the difficulty arose, intimated the proper course would be for the party desiring to proceed to request the clerk of the peace to transmit the order of sessions and case to the Crown Office, and in the event of his declining to do so, to make an application to the Court to compel him: *R.* v. *Heptinstall*, 25 Nov. 1880. Should a clerk of the peace not accept such an invitation, it is not quite clear what steps should be taken; but it is considered that in such a case application might be made for a writ of *certiorari*, as the proceeding by *certiorari* is not abolished by sect. 40, which probably only contemplated cases where the clerk of the peace would do what was reasonable. If this proceeding failed, an application for a *mandamus* to the justices to transmit the order and case to the Crown Office might be made, although *mandamus* will not lie to justices at quarter sessions to state the case, but only to enter continuances and hear the appeal, on the ground that the order being conditional on the statement of the case, the sessions have not decided it: *R.* v. *Justices of Suffolk*, 1 Dowling, 163. The section also caused a doubt as to whether the limit of time imposed by 13 Geo. 2, c. 18, s. 5 (see last preceding Rule), for applying for a *certiorari* and the necessity for giving a recognizance under 5 Geo. 2, c. 19, s. 2 (see Rule 38), still remained; the provisions of this Rule reinstate a limitation of time, and Rule 38 provides for a recognizance being given, the object of such recognizance being to prevent any vexatious removal. Rr. 34, 35.

Copy, commitment, &c., to be verified by affidavit.

35. No order for the issuing of a writ of certiorari to remove any order, conviction, or inquisition, or record, or writ of habeas corpus ad subjiciendum shall be granted where the validity of any warrant, commitment, order, conviction, inquisition, or record shall be questioned, unless at the time of moving a copy of any such warrant, commitment, order, conviction, inquisition, or record, verified by affidavit, be produced and handed to the officer of the Court before the motion be made, or the absence thereof accounted for to the satisfaction of the Court.

This Rule is new, but affirms the usual and a very useful practice. In some instances when counsel have been permitted to move with-

Rr. 35, 36.

out a verified copy being produced at the time of moving, and have obtained a rule on the production of such a copy, on cause being shown the ground for the motion has failed altogether, the party moving has had to pay the costs of discharging the rule, and the party proceeded against the difference between solicitor and client, and party costs.

For form of affidavit see No. 172, and for form of gaoler's certificate, No. 173, *post*, p. 238.

Recognizance upon removal of orders of sessions, &c.

36. No writ of certiorari shall be allowed to remove any judgment, order, or conviction given or made by justices, unless the party (other than the Attorney-General acting on behalf of the Crown) prosecuting such certiorari, before the allowance thereof, shall enter into a recognizance with sufficient sureties before one or more justices of the county or place or at their general or quarter sessions, where such judgment or order shall have been given or made, or before any Judge of the High Court in the sum of 50*l.*, with condition to prosecute the same at his own costs and charges with effect, without any wilful or affected delay, and to pay the party in whose favour or for whose benefit such judgment, order, or conviction shall have been given or made, within one month after the said judgment, order, or conviction shall be confirmed, his full costs and charges, to be taxed according to the course of the Court where such judgment, order, or conviction shall be confirmed, and in case the party prosecuting such certiorari, shall not enter into such recognizance, or shall not perform the conditions aforesaid, it shall be lawful for the said justices to proceed and make such further order for the benefit of the party for whom such judgment shall be given, in such manner as if no certiorari had been granted.

This Rule embodies the provisions of 5 Geo. 2, c. 19, s. 2, but in much wider words. That statute did not apply to prosecutors on the principle that the right of the Crown could not be taken away except by express words, see *R.* v. *Farewell*, 1 East, 305 ; *R.* v. *Allen*, 15 East, 341 ; *R.* v. *Berkeley and Another*, 1 Ld. Kenyon's Rep. 80 ; *R.* v. *Bodenham*, 1 Cowp. 78 ; *R.* v. *Boultbee*, 4 A. & E. 498 ; *R.* v. *Spencer*, 9 A. & E. 485 ; but this Rule would appear to be intended to do so, as it provides an exception on behalf of the Crown and only extends it to the Attorney-General. It applies to

all orders of justices in or out of session, and whether upon appeal or otherwise, which the Act from which it is taken did not, though the Court extended the practice so as to include them : see *R.* v. *Jenkinson*, 1 T. R. 82; *R.* v. *Jones*, 9 D. P. C. 504 ; 5 Jur. 364.

As to the mode of entering into a recognizance by inhabitants, corporations, and other large bodies, see note to Rule 30, *ante*, p. 17.

It is not sufficient that two sureties enter into a recognizance in £25 each, *R.* v. *Dunn*, 8 T. R. 217; there must be one joint recognizance by the party suing out the writ with two sureties : see *R.* v. *Boughey*, 4 T. R. 281.

Form of recognizance, No. 18, *post*, p. 174.

Order, &c., may be quashed on application for certiorari.

37. When cause is shown against an order nisi for a certiorari to remove any judgment order or conviction upon which no special case has been stated, given, or made by justices of the peace for the purpose of quashing such judgment, order or conviction, the Divisional Court, if it shall think fit, may make it a part of the order absolute for the certiorari that the judgment, order or conviction shall be quashed on return without further order, and in such case no such recognizance as is required by Rule 36 shall be necessary, and a memorandum to that effect shall be endorsed by the proper officer upon the issuing of the writ of certiorari.

This Rule is new, but affirms what has now been the practice of the Court for some years, but usually with the consent of the parties.

For Form of Memorandum, see No. 22, *post*, p. 176.

Recognizance upon special case from sessions.

38. No special case stated upon any order, or other determination of a court of general or quarter sessions shall be filed at the Crown Office Department, unless the party proceeding upon such special case shall enter into a recognizance as provided by Rule 36, and in default thereof the justices may proceed as in that Rule provided.

This Rule provides for a recognizance being given where an order of sessions has been made subject to a case for the opinion of the Queen's Bench Division : see note to Rule 34, *ante*, p. 20.

Form of recognizance, No. 20, *post*, p. 175.

Condition of recognizance in civil

39. In all civil causes or matters, which shall have been removed by certiorari, or in respect of which a special case shall have been stated, the recognizance shall be conditioned

Rr. 39–42. proceedings.

as regards costs to pay such costs, if any, as the Court shall order.

This Rule is in the nature of a proviso to Rule 36, *ante*, and is rendered necessary by reason of Rule 300, *post*, p. 137, applying the provisions of Order LXV. (Costs) to all civil proceedings on the Crown side.

Form of recognizance, No. 19, *post*, p. 174.

Order for certiorari to state objections.

40. No objection on account of any omission or mistake in any judgment or order of any justice of the peace, court of summary jurisdiction, or court of general or quarter sessions, brought up upon a return to a writ of certiorari and filed at the Crown Office Department, shall be allowed, unless such omission or mistake shall have been specified in the order for issuing such certiorari.

The provisions of this Rule are taken from 12 & 13 Vict. c. 45, s. 7, and 11 & 12 Vict. c. 31, s. 6, but in a somewhat different form.

Venue for trial to be stated in writ of certiorari.

41. Every writ of certiorari for removing an indictment from the Central Criminal Court shall specify the county or jurisdiction in which the same shall be tried, and a jury shall be summoned and the trial proceed in the same manner in all respects as if the indictment had been originally preferred in that county or jurisdiction.

This Rule embodies the provisions of 9 & 10 Vict. c. 24, s. 3.

The Court has a discretion to name the venue, and it is no objection to the jurisdiction of the Court that the venue named does not correspond with the county or place where the alleged offence was committed : *R.* v. *Castro*, L. R. 9 Q. B. 350 ; 43 L. J., Q. B. 105 ; 30 L. T. 320 ; see also 28 L. T. 342.

Application to remove indictment into Central Criminal Court.

42. An application for an order that an indictment or inquisition removed into the Queen's Bench Division shall be tried at the Central Criminal Court, or a motion to remove an indictment or inquisition by certiorari into the Central Criminal Court for trial under 19 Vict. c. 16, shall, during the sittings, be made to the Queen's Bench Division by motion for an order nisi ; and in the vacation, when there is no sitting of a Divisional Court, to a Judge at Chambers for a summons ; and the order may be made absolute or

granted upon such terms as to recognizance or otherwise as the Court or Judge may consider reasonable. Rr. 42-44.

See the statute herein referred to, commonly known as "Palmer's Act." 2nd 16 & 17 V.C. 30 - 24 & 25. Sub 24.

INDICTMENTS AND INFORMATIONS.

Certificate for warrant on indictment found.

43. Every indictment found by the grand jury in the Queen's Bench Division may, if necessary, be certified to a Judge, in order that such Judge may (if he thinks proper) immediately issue his warrant for the apprehending of the defendant.

For Form of Certificate, see No. 41, Warrants, Nos. 43 to 45, App. pp. 184—186. See also Rule 86, *post*, p. 43.

By 35 & 36 Vict. c. 52, "It shall not be necessary to summon a grand jury of Middlesex to come before the Queen at Westminster in any term unless the Master of the Crown Office has before the fourth day of that term received notice of some business intended to be brought before them, and it shall be the duty of the said Master to give notice to the sheriff accordingly."

Formerly two juries of the county of Middlesex were sworn in the Court of Queen's Bench every term, but in consequence of all the ordinary criminal work of the county going either to the Central Criminal Court or the Middlesex Sessions, it happened that these juries were left with little or no duties to perform, and in 1863 the Court directed that for the future only one jury should be summoned, and this was followed in 1872 by the passing of the above enactment.

No bill has been presented since the year 1868, and no jury has been summoned since the Act of 1872 came into force.

Defendant to be discharged on giving bail if prosecutor does not proceed.

44. If any defendant in any indictment or information depending in the Queen's Bench Division shall be committed to prison, and detained for want of bail for his appearance to such indictment, or information, for the space of one calendar month next following such commitment, and the prosecutor of such indictment or information shall not proceed within that time, such defendant shall after the expiration thereof be discharged by order of the Court or a Judge

Rr. 44–46.

upon entering a common appearance to the said indictment or information (unless good cause shall be shown to the contrary); eight days' notice shall be given by the defendant or his solicitor of his intention to apply for such order.

The provisions of this Rule are new, and are doubtless framed with the object of preventing a defendant being detained in prison for an unnecessarily long period by the laches of the prosecutor.

For Form of Notice, see No. 25, App. p. 177.

When defendant in custody to be brought up for sentence.

45. If any such defendant shall be convicted upon any such indictment or information as in the last preceding Rule mentioned, and shall be afterwards committed or detained for want of bail, the prosecutor shall cause him to be brought up for judgment within eight days after the time limited by Rule 166 for moving for a new trial if the Court be then sitting, and if the Court be not sitting, within the first eight days of the sittings next after that in which the trial was had, and in default of his so doing within that time, or within such further time as may have been granted by the Court or a Judge for that purpose, the defendant may, on application to the Court, be discharged on his own recognizance.

The provisions of this Rule are also new, and framed with the same object as the last Rule.

For Form of Notice, see No. 26, App. p. 177.

Recognizance on filing information.

46. With the exception of ex officio informations filed by the Attorney-General on behalf of the Crown no criminal information or information in the nature of a quo warranto shall be exhibited, received, or filed at the Crown Office Department without express order of the Queen's Bench Division in open Court, nor shall any process be issued upon any information other than an ex officio information, until the person procuring such information to be exhibited shall have filed at the Crown Office Department a recognizance in the penalty of 50*l.* effectually to prosecute such information and to abide by and observe such orders as the Court shall direct, such recognizance to be entered into before the

Queen's coroner and attorney or the master of the Crown Office, or a justice of the peace of the county, borough, or place in which the cause may have arisen. R. 46–48.

This Rule is to the same effect as 4 & 5 Will. & M. c. 18, s. 2, but it increases the amount of the recognizance from 20*l.* to 50*l.*, and includes informations in the nature of a *quo warranto*. That Act did not specify such informations *eo nomine*, but it was applied by many decisions of the Court, on the ground that the usurpation of an office or franchise belonging to the Crown amounts to a misdemeanor: see *R.* v. *Mayor of Hertford*, Carth. 503; Salk. 376; *R.* v. *Howell*, Ca. temp. Hardw. 248; *R.* v. *Morgan*, Str. 1041; *R.* v. *Roberts*, 2 B. & Ad. 63; and Rule 51, *post*, p. 29.

Forms of Recognizances, Nos. 27 and 28, App. 177, 178.

Notice to justice of the peace of application for information.

47. No application shall be made for a criminal information against a justice of the peace for misconduct in his magisterial capacity unless a notice containing a distinct statement of the grievances, or acts of misconduct complained of, be served personally upon him, or left at his residence, with some member of his household, six days before the time named in it for making the application.

This Rule merely affirms what has long been the practice: see *R.* v. *Heming*, 5 B. & Ad. 666; *Ex parte Fentiman*, 2 A. & E. 127.

Form of Notice, No. 29, App. p. 178.

Application for criminal information.

48. The application for a criminal information shall be made to a Divisional Court by a motion for an order nisi, within a reasonable time after the offence complained of, and if the application be made against a justice of the peace for misconduct in his magisterial capacity, the applicant must depose on affidavit to his belief that the defendant was actuated by corrupt motives, and further, if for an unjust conviction, that the defendant is innocent of the charge.

This Rule somewhat alters the old practice in providing that all applications for criminal informations shall be made within a reasonable time. Formerly, it was considered that no application against a justice of the peace could be made so late that cause could not be shown against it in the second term after the alleged offence was committed: see *R.* v. *Smith*, 7 T. R. 80; *R.* v. *Saunders*, 10 Q. B. 484. In other cases, see *R.* v. *Jollie*, 4 B. & Ad. 867; *R.* v. *Robinson*, 1 W. B. 541.

As to the allegation that a justice of the peace has been actuated

Rr. 48–50.

by corrupt motives, see *R.* v. *Jackson and Another*, 1 T. R. 653 ; *R.* v. *Williamson and Another*, 3 B. & Ald. 582 ; *Ex parte Fentiman*, 4 A. & E. 127

As to the allegation of innocence, see *R.* v. *Athay*, 2 Burr. 653 ; *R.* v. *Webster*, 3 T. R. 388.

The granting of the information is entirely in the discretion of the Court, *R.* v. *Joliffe*, 4 T. R. 290 ; *R.* v. *Robinson*, 1 W. B. 542, and the Newspaper Libel and Registration Act, 1881 (44 & 45 Vict. c. 60), s. 3, does not apply to a criminal information : *Yates* v. *The Queen*, 14 Q. B. D. 648 ; 54 L. J., Q. B. 258—C. A.

As to the persons on whose behalf the information will be granted, see *R.* v. *Labouchere*, 12 Q. B. D. ; 53 L. J. Q. B. 362.

It is necessary that the party applying should come with clean hands, *R.* v. *Eden*, Lofft, 72 ; *R.* v. *Peach and Others*, 1 Burr. 548 ; *R.* v. *Wroughton and Others*, 3 Burr. 1683, that he should not have taken the law into his own hands, or have attempted to retaliate by libellous attacks or otherwise, *R.* v. *Hankey*, 1 Burr. 316 ; *R.* v. *Larrieu*, 7 A. & E. 277 ; *R.* v. *Nottingham Journal*, 9 D. P. C. 1042; or taken other means of redress : *R.* v. *Marshall*, 4 E. & B. 475 ; 24 L. J., Q. B. 242 ; *R.* v. *Fielding*, 2 Burr. 719 ; *R.* v. *Sparrow*, 2 T. R. 198 ; *Ex parte* ——, *Gent. one, &c.* 4 A. & E. 576, note.

Costs to defendant when acquitted or prosecutor does not proceed within a year.

49. If the prosecutor on any information not ex officio does not proceed to trial within a year after issue joined, or if the prosecutor causes a nolle prosequi to be entered, or if the defendant be acquitted, (unless the Judge at the time of trial certifies that there was reasonable cause for the information,) the Court, on motion for the same, may award the defendant his costs to the amount of the recognizance entered into by the prosecutor on filing the information.

This Rule is taken from 5 Will. & M. c. 18, s. 2 : see also *R.* v. *Filewood*, 2 T. R. 145 ; *R.* v. *Brooke*, 2 T. R. 190 ; *R.* v. *Savile*, 18 Q. B. 703.

Costs on prosecution for libel.

50. If on any indictment in the Queen's Bench Division, or information by a private prosecutor, for the publication of any defamatory libel judgment shall be given for the defendant, he shall be entitled to recover from the prosecutor the costs sustained by the said defendant by reason of such indictment or information, and upon a special plea of justification to such indictment or information, if the issue be found for the prosecutor, he shall be entitled to recover

from the defendant the costs sustained by the prosecutor by reason of such plea. Rr. 50, 51.

This Rule is taken from 6 & 7 Vict. c. 96, s. 8.

The costs include the costs of showing cause against the motion for the information : *R.* v. *Steel*, 1 Q. B. D. 482 ; 45 L. J. Q. B. 391.

The fact of the judge at the trial certifying that there "was reasonable cause for the information" (see last preceding Rule) will not prevent the costs following under this section : *R.* v. *Latimer*, 20 L. J., Q. B. 129; 15 Q. B. 1077. They may be recovered by action : *Richardson* v. *Willis*, L. R., 8 Exch. 69 ; 42 L. J., Exch. 68.

QUO WARRANTO.

Although an information in the nature of a *quo warranto* is in form a criminal proceeding, being the method of prosecution as well to punish the usurper of a public franchise by fine for the usurpation of a franchise as to oust him, or seize it for the Crown (3 Blac. Com. c. 17, s. 5, p. 263), and although such usurpation amounts to a misdemeanor (see *R.* v. *Roberts*, 2 B. & Ad. 63), it has long been applied to the mere purposes of trying the civil right, and the Judicature Act of 1884 (47 & 48 Vict. c. 61, s. 15) has enacted that "proceedings in *quo warranto* shall be deemed to be civil proceedings, whether for purposes of appeal or otherwise."

51. Every application for an information in the nature of a quo warranto shall be by motion to a Divisional Court for an order nisi, unless the same be ex-officio or be made in respect of a corporate office within the meaning of 45 & 46 Vict. c. 50, s. 225. Application for information.

This Rule is new, but affirms the old practice.

It is discretionary whether the Court grant or refuse the application : *R.* v. *St. Mary, Lambeth*, 8 A. & E. 356 ; *R.* v. *Ward*, L. R. 8 Q. B. 210 ; and *R.* v. *Cousens*, *ib.* 216.

The provisions of the section referred to in this Rule are as follows :—

Quo warranto and *mandamus.*

(1.) An application for an information in the nature of a *quo warranto* against any person claiming to hold a corporate office shall not be made after the expiration of twelve months from the time when he became disqualified after election.

(2.) In the case of such an application, or of an application for a *mandamus* to proceed to an election of a corporate officer, the applicant shall give notice in writing of the application to the person to be affected thereby (in this section called

Rr. 51–54.

the respondent), at any time not less than ten days before the day in the notice specified for making the application.

(3.) The notice shall set forth the name and description of the applicant, and a statement of the grounds of the application.

(4.) The applicant shall deliver with the notice a copy of the affidavits whereby the application will be supported.

(5.) The respondent may show cause in the first instance against the application.

(6.) If sufficient cause is not shown, the Court, on proof of due service of the notice, statement, and copy of affidavits used in support of the application, may, if it thinks fit, make the Rule for the information or *mandamus* absolute.

(7.) The Court may, if it thinks fit, direct that any issue of fact on an information be tried by jury in London or at Westminster.

(8.) The Court may, if it thinks fit, direct that any writ of *mandamus* issued shall be peremptory in the first instance.

Notice of motion in corporate cases.

52. In respect of such a corporate office as in the last preceding Rule mentioned, the application shall be by notice of motion to the person affected thereby to be served not less than ten days before the day specified in the notice for making the application.

Taken from 45 & 46 Vict. c. 50, s. 225, sub-s. (2), *supra.*

Form of notice.

53. The notice shall set forth the name and description of the applicant, and a statement of the grounds of the application, and the applicant shall deliver with the notice on service thereof a copy of the affidavits whereby the application will be supported.

For Form of Notice, see No. 34, App. p. 181.

Affidavit by relator.

54. No order for filing any information in the nature of a quo warranto shall be granted, unless at the time of moving an affidavit be produced by which some person shall depose upon oath that such motion is made at his instance as relator; and such person shall be deemed to be the relator in case such order shall be made absolute, and shall be named as such relator in such information in case the same shall be filed, unless the Court shall otherwise order.

Taken from a Rule of Court of 8th November, 1839.

It is not sufficient for the applicant to depose that if the information be granted, he intends to be the relator: *R.* v. *Hedges*, 11 A. &

E. 163; 9 D. P. C. 493; 5 Jur. 290. See also *R.* v. *Anderson*, 2 Q. B. 740; 11 L. J. Q. B. 233. R. 54.

The affidavit should show that the relator is a properly qualified person: *R.* v. *Thirlwin*, 33 L. J. Q. B. 171; 10 Jur., N. S. 206.

The relator must be a person having an interest in the corporation, *R.* v. *Kemp*, 1 East, 46, note; 2 Selw. N. P. 1172; but see *R.* v. *Brown*, 3 T. R. 574, note. He must not be disqualified by having acquiesced or concurred in the act which he comes to complain of, or in similar acts at former elections, *R.* v. *Clarke*, 1 East, 38; *R.* v. *Stacey*, 1 T. R. 1; *R.* v. *Symmons*, 4 T. R. 223, or by being himself subject to the same objection, *R.* v. *Lofthouse*, L. R. 1 Q. B. 433; 35 L. J. Q. B. 145; 7 B. & S. 447; *R.* v. *Cudlipp*, 6 T. R. 503. It is not necessary, on the one hand, that the relator should be a member of the corporation, nor, on the other hand, is inhabitancy in the corporate town a sufficient interest to entitle a party to become a relator, unless he can show that he is subject to the local jurisdiction, as being liable to the rates or otherwise: *R.* v. *Hodge*, 2 B. & Ald. 344, note; *R.* v. *Parry*, 6 A. & E. 810; *R.* v. *Quale*, 11 A. & E. 508.

An officer of a corporation will be disqualified from being a relator against a councillor for disqualification, to whom such officer has administered a declaration without objection, while cognisant of such disqualification, *R.* v. *Greene*, 2 Q. B. 460: 11 L. J. Q. B. 107; 6 Jur. O. S. 777. So a party who has concurred in overruling an objection when made against a third party at a former election will be disqualified from becoming relator on an information raising the same objection, *R.* v. *Parkyn*, 1 B. & Ad. 690; but his having so acted in a former election will be no disqualification if the objection were not then raised, *R.* v. *Benny*, 1 B. & Ad. 684. Corporators voting at an election of officers are not competent relators to question the authority of the presiding officers at such election, unless they show that they were not aware of the objection at the time of the election, *R.* v. *Slythe*, 6 B. & C. 240. Corporators are taken to be cognisant of all objections arising from the legal effect of their own charter, *R.* v. *Trevennen*, 2 B. & Ald. 479, and also (unless the contrary be shown) of recent acts of the corporation of which they are members, *R.* v. *Slythe*, 6 B. & C. 243; but if they have no means of knowing of an objection to an election at the time it took place, their having taken part in such election will not disqualify them from becoming relators, *R.* v. *Smith*, 3 T. R. 573; *R.* v. *Morris*, 3 East, 213. Nor in general will a subsequent recognition of the election, as by acting with the defendant in the exercise of his office, be a sufficient objection against a relator: *R.* v. *Clarke*, 1 East, 38; *R.* v. *Benney*, 1 B. & Ad. 684.

It is no valid objection to a relator that he is in indigent circumstances if he have a sufficient interest, although there may be ground to believe that he is not applying at his own expense, but in

Rr. 54-58.

collusion with a stranger; in such a case, however, on its being shown that the relator is not acting *bonâ fide*, the Court may require security for costs: *R.* v. *Wakelin*, 1 B. & Ad. 50; *R.* v. *Dudley*, 7 D. P. C. 700.

If there be one unobjectionable relator making affidavit, his affidavit, which might be insufficient of itself, may be aided by the affidavits of other deponents, though they may be disqualified from becoming relators: *R.* v. *Parry*, 6 A. & E. 810; *R.* v. *Brame*, 4 A. & E. 664.

Objections to be stated in order *nisi*.

55. Every objection intended to be made to the title of a defendant on an information in the nature of a quo warranto shall be specified in the order to show cause or notice of motion, and no objection not so specified shall be raised by the relator on the pleadings without the special leave of the Court or a Judge.

Taken from a Rule of Court of Hilary Term, 1827: see *R.* v. *Bond*, 2 T. R. 767; *R.* v. *Slythe*, 6 B. & C. 244.

Costs on discharging order *nisi*.

56. The Court may discharge an order nisi for an information in the nature of a quo warranto with or without costs, and in its discretion may, upon such notice as may be just, direct the costs to be paid by the solicitor or other parties joining in the affidavits in support of the application, although he be not the proposed relator.

This Rule is new. The latter portion affirms the practice as stated in *R.* v. *Greene*, 4 Q. B. 646; 12 L. J. Q. B. 239. See also *S. C.*, 11 L. J. Q. B. 281.

New relator.

57. A new relator may by leave of the Court, on notice of motion, be substituted for the one who first enters into the recognizance on special circumstances being shown.

This Rule is new, but affirms the practice, as appears by *R.* v. *Alderson and Others*, 11 A. & E. 3.

Consolidation of several cases.

58. Where several orders nisi for informations in the nature of quo warranto have been granted against several persons for usurpation of the same offices, and all upon the same grounds of objection, the Court may order such orders to be consolidated, and only one information to be filed in respect of all of them, or may order all proceedings to be

stayed upon all but one, until judgment be given in that one, provided always that no order be made to consolidate or stay any proceedings against any defendant unless he give an undertaking to disclaim, if judgment be given for the Crown, upon the information which proceeds. Rr. 58, 59.

Taken from the repealed statute, 9 Anne, c. 20, the proviso is new, but affirms the recognised practice of the Court: see *R.* v. *Foster and Others*, 1 Burr. 573.

59. If a defendant on an information in the nature of a quo warranto does not intend to defend, he may to prevent judgment by default enter a disclaimer at the Crown Office Department and file a copy there, and deliver another copy to the relator or his solicitor. Upon the disclaimer being filed judgment of ouster may be entered at the Crown Office Department, and the costs taxed as in judgment by default. Disclaimer.

This Rule is new, but affirms the practice, except that hitherto a judgment of ouster could only be entered under 9 Anne, c. 20, s. 5, in respect of corporate offices (municipal) in corporate places: see *R.* v. *McKay*, 5 B. & C. 640; *R.* v. *Grimshaw*, 5 D. & L. 249, 17 L. J., Q. B. 19, 12 Jur. O. S. 134.

Form of Disclaimer, No. 35, App. p. 182.

Form of Judgment of Ouster, No. 36, *ib.*

MANDAMUS.

The prerogative writ of *mandamus* is a discretionary writ and not a writ of right, and may therefore be refused in the discretion of the Court, but where granted it is upon the merits of the case, and not upon the Court's discretion, and therefore the granting of the writ is subject to appeal: *R.* v. *Churchwardens of All Saint's, Wigan*, 1 Appeal Cases, 611.

Order LIII., Part II., is repealed (see Rule 307, *post*, p. 163), and the following Rules are substituted. The new Rules, whilst embracing in a slightly amended form all the provisions of, and being more extensive than the repealed ones, do not in any material respect vary the existing practice. The *mandamus* referred to in Order LIII., Part I., is the *mandamus* referred to also in sub-section 8 of the 25th section of the Judicature Act, 1873, and is not the prerogative writ: *Glossop* v. *Heston and Others*, L. R. 12 Ch. D. 122, C. A.

Rr. 60-62.

Application for *mandamus.*

60. Application for a prerogative writ of mandamus shall, during the sittings, be made to a Divisional Court of the Queen's Bench Division by motion for an order nisi; and in the vacation to a Judge in Chambers for a summons to show cause, upon its being shown to the satisfaction of such Judge that the matter is urgent. Provided that this Rule shall not apply to any application for a writ of mandamus under 45 & 46 Vict. c. 50, s. 225.

This Rule is an amendment of Order LIII., Rule 5, and provides for a Judge in vacation, in urgent matters, granting the writ. Hitherto the writ has only issued by the order of the Court.

Under the old practice in some cases of emergency, or where the act in question was merely ministerial, the order was sometimes granted absolute in the first instance: see 17 & 18 Vict. c. 125, s. 76; *R.* v. *Churchwardens of Manchester*, 7 D. P. C. 707; *R.* v. *Godolphin and Another*, 13 L. J., M. C. 57; *R.* v. *Fisher*, Sayer, 160; *Ex parte Foundling Hospital*, 5 D. P. C. 722. The new Rule does not appear to admit of that practice being continued except under the Municipal Corporations Act, but by Rule 67, *post*, p. 36, power is given to the Court or Judge to make the writ peremptory in the first instance.

The provisions of the Municipal Corporations Act, 1882 (45 & 46 Vict. c. 50), s. 225, referred to in this rule are set out in extenso in the note to Rule 51, *ante*, p. 29.

Under the former practice the application to the Court was required to be made by counsel, *Ex parte Wason*, 10 B. & S. 582, and as these Rules are silent on the point, it would appear that it must still be so made, as the existing practice remains in force where no other provision is made, r. 2, *ante*, p. 1; and it must be made on behalf of a person really interested, *R.* v. *Mayor of Peterborough*, 44 L. J., Q. B. 85, 23 W. R. 343.

To whom notice to be given.

61. Notice shall be given by the order nisi for a mandamus to every person who by the affidavits on which the order is moved shall appear to be interested in or likely to be affected by the proceedings, and to any person who in the opinion of the Court or Judge ought to have such notice.

This Rule is new, but affirms the existing practice.
See the repealed Act, 1 Wm. 4, c. 21, s. 3.

Service of order *nisi.*

62. The order nisi shall be served upon each person to

whom notice is given by the order, as well as the party whom the order requires to show cause. Rr. 62-65.

This Rule is new, but affirms the practice.

Persons affected may show cause.

63. Any person, whether he has had notice or not, who can make it appear to the Court or Judge that he is affected by the proceeding for a writ of mandamus may show cause against the order nisi or summons, and shall be liable to costs in the discretion of the Court or a Judge if the order should be made absolute, or the prosecutor obtain judgment.

This Rule is new, but affirms the practice: see *R.* v. *Justices of Middlesex*, 2 D. P. C. (N. S.), 719; *R.* v. *Bishop of Ely*, 1 W. B. 53.

No person is allowed to show cause unless he has taken office copies of the Order *nisi*, and the affidavits on which it was granted: see Rule 26, *ante*, p. 9.

Service of order absolute.

64. The order absolute for a mandamus need not be served, but the cost of service of the order absolute may be allowed in the discretion of the taxing officer, where the writ is not issued.

The latter part of this Rule is new, and is intended to apply to those cases where the party moved against has consented to obey the order absolute without waiting for the writ to be issued against him; or where, not having appeared, the prosecutor has served him with the order absolute, and he has obeyed it. In strictness the prosecutor may in all cases issue and serve the writ at his discretion, which is an additional expense, and may sometimes be saved by serving the order absolute.

Service of writ.

65. If the writ of mandamus is directed to one person only the original must be personally served upon such person, but if the writ be directed to more than one, the original shall be shown to each one at the time of service, and a copy served on all but one, and the original delivered to such one.

This Rule is new, and is somewhat more strict than the former practice. It has been a common practice not to serve the writ personally in the first instance, but if it became necessary to apply for an attachment for not returning the writ where it had not been

Rr. 65–69.

personally served, a side bar rule to return it in a certain number of days might be personally served, and the application for the attachment founded upon that.

As to service on companies and other large bodies, see next Rule.

Service upon companies and other public bodies.

66. When a writ of mandamus is directed to companies, corporations, justices, or public bodies, service shall be made upon such and so many persons as are competent to do the act required to be done, the original being delivered to one of such persons, except where by statute service on the clerk or some other officer is made sufficient service.

This Rule is new, but affirms existing practice.

Peremptory writ in first instance.

67. The Court or a Judge may, if they or he shall think fit, order that any writ of mandamus shall be peremptory in the first instance.

Taken from Order LIII., Rule 6.

Teste, return, and form of writ.

68. Every writ of mandamus shall bear date on the day when it is issued, and shall be tested in the name of the Lord Chief Justice of England. The writ may be made returnable forthwith, or time may be allowed to return it, either with or without terms, as the Court thinks fit. A writ of mandamus shall be in the Form in the Appendix No. 37, with such variations as circumstances may require.

Taken from Order LIII., Rule 7. See also Rule 232, *post*, p. 106.

Return.

69. Any person by law compellable to make any return to a writ of mandamus shall make his return to the first writ.

Taken from Order LIII., Rule 8.

No other return than that of obedience can be made to the peremptory writ.

Where a return was made to a peremptory writ, directed to the lord and steward of a manor, to admit a tenant, stating that the defendants could not obey the writ because it did not specify how or in what manner or amongst what records the tenant was to be admitted, the Court directed the return to be taken off the file, and granted a rule absolute, in the first instance, for an attachment: *R.* v. *Lord Cardigan and Another*, Mich. 1846.

Rr. 70–73.

Question of law.

70. Where a point of law is raised in answer to a return or any other pleading in mandamus, and there is no issue of fact to be decided, the Court shall, on the argument of the point of law, give judgment for the successful party, without any motion for judgment being made or required.

Taken from Order LIII., Rule 10.

For Form of Judgment, see No. 124, *post*, p. 218.

Peremptory *mandamus*.

71. Where under Rules 70 and 136 the applicant obtains judgment, he shall be entitled forthwith to a peremptory writ of mandamus to enforce the command contained in the original writ, and the judgment shall direct that a peremptory writ do issue.

Taken from Order LIII., Rule 11.

After judgment for the Crown and performance of the act required by the defendant, the Court will quash a peremptory writ as unnecessary and an abuse of the process of the Court: *R.* v. *Sadler's Company*, 4 B. & S. 570, 33 L. J., Q. B. 68.

When a *mandamus* is addressed to churchwardens during their year of office, and disobeyed by them during that period, it is no reason for refusing a peremptory writ that their year of office has expired: *R.* v. *Allen*, L. R. 8 Q. B. 69, 42 L. J. Q. B. 37.

The peremptory writ is in the same form as the first writ of *mandamus*, omitting the words "*or that you show Us cause to the contrary thereof.*"

No action to lie for thing done in obedience to writ.

72. No action or proceeding shall be commenced or prosecuted against any person in respect of anything done in obedience to a writ of mandamus issued by the Supreme Court or any Judge thereof.

Taken from Order LIII., Rule 12. Which rule was taken from 6 & 7 Vict. c. 67, s. 3, now repealed.

Return by third party really interested.

73. When it appears to the Court that the respondent claims no right or interest in the subject-matter of the application, or that his functions are merely ministerial, the return to the writ, and all subsequent proceedings down to judgment, shall still be made and proceed in the name of the person to whom the writ is directed, and, if the Court thinks fit so to order, may be expressed to be made on

Rr. 73-75. behalf of the persons really interested therein. In that case the persons interested shall be permitted to frame the return and conduct the subsequent proceedings at their own expense; and if judgment is given for or against the applicant it shall likewise be given for or against the persons on whose behalf the return is expressed to be made; and if judgment is given for them, they shall have the same remedies for enforcing it as the person to whom the writ is directed would have in other cases.

Taken from Order LIII., Rule 13, embodying the provisions of 1 Wm. 4, c. 21, s. 3 (repealed).

Under that Act it has been decided that the Court has a discretion, whether it will allow a return to be made and joined on behalf of a third person claiming a right or interest, *R.* v. *Cheek*, 16 L. J., M. C. 65. Even after a demurrer to the return by the party to whom the writ was delivered, the Court allowed a party interested to make a return: *R.* v. *Paynter*, 14 L. J., M. C. 182, 9 Jur. O. S. 926.

Proceedings not to abate by death, &c.

74. Where, under the last preceding Rule, the return to a writ of mandamus is expressed to be made on behalf of some person other than the person to whom the writ is directed, the proceedings on the writ shall not abate by reason of the death, resignation, or removal from office of that person, but they may be continued and carried on in his name; and if a peremptory writ is awarded, it shall be directed to the successor in office or right of that person.

Taken from Order LIII., Rule 14, which embodied the provisions of 1 Wm. 4, c. 21, s. 5: see *Mayor of Rochester* v. *R.* (*in error*), E. B. & E. 1024, Ex. Ch., 27 L. J. Q. B. 434.

Application of Order LVII.

75. In any case of mandamus, in which a proceeding by way of interpleader may be proper, the provisions of Order LVII. of the Rules of the Supreme Court, 1883 (Interpleader), shall be applicable, so far as the nature of the case will admit.

Taken from Order LIII., Rule 15.

76. No order for the issuing of any writ of mandamus shall be granted, unless at the time of moving an affidavit be produced by which some person shall depose upon oath that such motion is made at his instance as prosecutor, and if the writ be granted the name of such person shall be endorsed on the writ as the person at whose instance it is granted. Rr. 76–79. Affidavit of prosecutor.

This Rule is new, but follows a useful practice: see *R.* v. *Mayor of Peterborough*, 44 L. J., M. C. 85, 23 W. R. 343.
The person applying must be a person really interested: *ib.*

Q.B.

77. Every application for the costs of a mandamus shall, unless the Court or a Judge shall otherwise order, be made before the fifth day of the sittings next after that in which the right to make such application accrued, and shall be upon notice of motion to be served eight days before the day named therein for moving. When application for costs to be made.

This Rule is taken from a Reg. Gen. of Trinity Term, 1867 (7 B. & S. 399), but alters the time from "within two terms of obeying the writ" to the limit mentioned.

78. The party moving for costs shall leave at the Crown Office Department a notice for the production in Court of all the affidavits filed in support of, and in opposition to, the original order. Notice for production of affidavit on motion for costs.

This Rule is new; but a Reg. Gen. of Easter Term, 1843 (3 G. & D. 612), required the Rule for payment of costs to be drawn up on reading all the affidavits filed in support of, and in opposition to, the original Rule.

79. Every application for a writ of mandamus to justices to enter continuances and hear an appeal shall be made within two calendar months after the first day of the sessions at which the refusal to hear took place, unless further time be allowed by the Court or a Judge, or unless special circumstances appear by affidavit to account for the delay to the satisfaction of the Court. Time for moving for *mandamus* to hear appeal.

A former Reg. Gen. (E. B. & E. 255) required such an application to be made in the term next after the hearing had been refused: see

Rr. 79, 80.

R. v. *Recorder of Richmond*, 27 L. J., M. C. 197, E. B. & E. 253, 4 Jur. (N. S.) 456.

ORDERS IN THE NATURE OF MANDAMUS.

Motion for.

80. An application for an order in the nature of a mandamus, to justices, or to a County Court Judge, or to justices to state and sign a case, shall be by motion for an order nisi (in the same manner as is provided in Rule 60).

This Rule is framed in accordance with the several Acts set out below, and which substitute the order for the writ of *mandamus*.

To justices to compel performance of some act or duty.

By 11 & 12 Vict. c. 44, s. 5—Whereas it would conduce to the advancement of justice, and render more effective and certain the performance of the duties of justices, and give them protection in the performance of the same, if some simple means not attended with much expense were devised by which the legality of any act to be done by such justices might be considered and adjudged by a Court of competent jurisdiction, and such justice enabled and directed to perform it without risk of any action or other proceeding being brought or had against him; be it therefore enacted, that, in all cases where a justice or justices of the peace shall refuse to do any act relating to the duties of his or their office as such justice or justices, it shall be lawful for the party requiring such act to be done to apply to Her Majesty's Court of Queen's Bench, upon an affidavit of the facts, for a Rule calling upon such justice or justices, and also the party to be affected by such act, to show cause why such act should not be done; and if after due service of such Rule good cause shall not be shown against it, the said Court may make the same absolute, with or without or upon payment of costs, as to them shall seem meet; and the said justice or justices upon being served with such Rule absolute shall obey the same, and shall do the act required; and no action or proceeding whatsoever shall be commenced or prosecuted against such justice or justices for having obeyed such Rule, and done such act so thereby required as aforesaid.

For some time it was considered that this Act only related to cases where justices required protection from an action, *R.* v. *Percy*, L. R. 9 Q. B. 64, 43 L. J., M. C. 45; overruling *R.* v. *Aston*, 1 L. M. & P. 491, but the decision in *R.* v. *Percy* was often questioned, and it has now been decided that this proceeding and *mandamus* are concurrent remedies at the discretion of the Court, *R.* v. *Biron*, 51 L. T. 429; 14 Q. B. D. 474; and *R.* v. *Phillimore*, 14 Q. B. D. 474 note, and 51 L. T. 205.

An application under this section may be moved for by an applicant in person (*R.* v. *Biron*, 51 L. T. 429).

R. 80.

To justices to state a case.

Where justices refuse to state a case under 20 & 21 Vict. c. 43, s. 2, or 42 & 43 Vict. c. 49, s. 33, it is provided by s. 5 of the Act 20 & 21 Vict. c. 43, that "it shall be lawful for the appellant to apply to the Court of Queen's Bench upon an affidavit of the facts for a Rule calling upon such justice or justices, and also upon the respondent, to show cause why such case should not be stated; and the said Court may make the same absolute or discharge it, with or without payment of costs, as to the Court shall seem meet, and the justice or justices, upon being served with such Rule absolute, shall state a case accordingly, upon the appellant entering into such recognizance" as in the Act before provided.

The application to state a case is not an appeal from an inferior Court under s. 45 of the Act of 1873, and must be made to the Queen's Bench Division, *Re Ellershaw and Others*, 1 Q. B. D. 481, 45 L. J., M. C. 45.

Doubts have previously been entertained in consequence of an observation of Channell, B., in *Ex parte Smith*, 27 L. J., M. C. 186, whether under s. 8 of the Act of 20 & 21 Vict. c. 43 (impliedly repealed by s. 45 of the Judicature Act, 1873), a Judge at Chambers had power to order a case to be stated under the above section; but it should be noted that the section itself only mentions the Court, and it is suggested that s. 8 only came into operation after the case was stated under s. 5, and this Rule only provides that the application shall be by motion to a Divisional Court of the Queen's Bench Division for an order *nisi*.

To County Courts.

By 19 & 20 Vict. c. 108, s. 43, no writ of *mandamus* shall hence-forth issue to a Judge or an officer of the County Court for refusing to do any act relating to the duties of his office; but any party requiring such act to be done may apply to any superior Court [*or* a Judge thereof], upon an affidavit of the facts, for a Rule or summons calling upon such Judge or officer of a County Court, and also the party to be affected by such act, to show cause why such act should not be done; and if after the service of such Rule or summons good cause shall not be shown, the superior Court or Judge thereof may by Rule or order direct the act to be done, and the Judge or officer of the County Court, upon being served with such Rule or order, shall obey the same on pain of attachment; and in any event the superior Court [*or* the Judge thereof] may make such order with respect to costs as to such Court [*or* Judge] shall seem fit.

The power given to a Judge by this section is repealed by 21 & 22 Vict. c. 74, s. 4.

Costs.

Although the costs of these applications are in the discretion of the Court, it is not the practice of the Queen's Bench Division to give costs against justices of the peace or other persons exercising judicial functions, when directed by *mandamus* or order in the nature thereof, to do some act which they have refused to do, unless the Court be satisfied on the argument that such judicial person has

Rr. 80–83.

acted oppressively and from some improper motive, *Reg.* v. *Goodall*, L. R., 9 Q. B. 559, in so refusing: see Corner's C. P. 225. It would appear from the proviso in 20 & 21 Vict. c. 43, s. 6, on an application to justices to state a case, that the costs to be dealt with in s. 5 have reference to the party to whom notice of the Rule is given, and not to the justice or justices called upon to show cause.

PROHIBITION.

Application for.

81. An application for a writ of prohibition on the Crown side shall be made by motion to a Divisional Court for an order nisi in all criminal causes or matters; and in civil proceedings on the Crown side by motion for an order nisi, or by summons before a Judge at Chambers.

This Rule is new, but does not alter the practice. It has become the practice in all matters to draw up the Orders of Court for writs of prohibition on the Crown side. A master has no jurisdiction to deal with prohibition: see Order LIV., Rule 12 (g).

As to pleadings in prohibition, see Rule 137, *post*, p. 58. An appeal lies from the decision of the Divisional Court on an application for a prohibition to a County Court: *Shubrook* v. *Tuffnell*, 9 Q. B. D. 621, C. A.

For Form of Writ see No. 39, *post*, p. 183.

Order absolute in first instance.

82. The order may be made absolute ex parte in the first instance on special circumstances being shown, in the discretion of the Court or Judge.

This Rule is new, but merely revives an old practice which is rarely exercised.

APPEARANCE TO INDICTMENT, INFORMATION, AND INQUISITION.

Entry of appearance.

83. A defendant to any indictment, information, or inquisition in the Queen's Bench Division, or removed into the said division by writ of certiorari or otherwise, must enter or cause to be entered in a book at the Crown Office an appearance to such indictment, information, or inquisition; except that in treason or felony the defendant must

appear in person in open Court unless the Court or a Judge shall order that the defendant be at liberty to appear and plead by solicitor, in which case the appearance may be entered as above stated. Rr. 83 86.

This Rule is new, but affirms the existing practice, and is an amendment of Rule 16 of Crown Office Rules of 1844. Form of appearance, No. 24, *post*, p. 176.

84. If an indictment has been removed at the instance of the defendant, the prosecutor may draw up an order at the Crown Office to be served upon such defendant or his solicitor to appear, plead, and try according to the conditions of the recognizances entered into on removing such indictment. Order to appear, plead, and try.

This Rule is new, but affirms the existing practice.

85. In case such defendant shall not so appear, plead, and try, application may be made to the Court to estreat the recognizances so entered into, and for a writ of procedendo to carry back the indictment to the Court from whence it came; or if such writ of procedendo be not applied for, the Court or a Judge, upon a certificate of one of the officers of the Crown Office of such default, may issue a warrant as provided in Rule 87. The certificate may be in the Form No. 40, or to the like effect. Default in appearance.

This Rule is new, but affirms existing practice. The provision as to estreating the recognizance is taken from 16 & 17 Vict. c. 32, s. 8. That for the warrant from 48 Geo. 3, c. 58, substituting a certificate for an affidavit.

86. As against any defendant to any indictment, information, or coroner's inquisition other than a defendant at whose instance a writ of certiorari may have been awarded to remove such indictment or inquisition, the prosecutor may obtain a certificate from one of the officers of the Crown Office of an indictment, information, or coroner's inquisition having been filed. The certificate may be in the Form No. 41 or 42, or to the like effect. Warrant to arrest or to hold to bail.

This Rule is new, but affirms the existing practice in cases of a

Rr. 86–90.

grave nature. The more usual course, as against defendants not under recognizance, is to proceed by *venire facias:* see Rule 94, *post*, p. 46.

Warrant where default has been made.

87. Upon production of such certificate to a Judge, such Judge may, if necessary, issue a warrant under his hand to apprehend the defendant and cause him to be brought before him or some other Judge or before a justice of the peace to be dealt with according to law; the warrant may be in Form No. 43 or 44, or to the like effect.

This Rule is new, but follows the existing practice; 11 & 12 Vict. c. 42, s. 3, does not apply to indictments in the Queen's Bench Division.

Warrant of committal.

88. If it be proved upon oath before such Judge or justice of the peace that the person apprehended and brought before him is the person charged and named in such indictment, information, or inquisition, such Judge or justice of the peace shall without further inquiry or examination commit him to prison by a warrant, which may be in the Form No. 45, or to the like effect, or admit him to bail.

Provided that nothing in these Rules shall affect the jurisdiction of a Judge to admit any defendant to bail, whether in felony or misdemeanor, at any time after committal and before conviction if he shall in his discretion so think fit.

When defendant has been bailed in Court below.

89. When an indictment has been removed into the Queen's Bench Division, and the defendant has previously been held to bail in the Court below, the Judge shall not issue his warrant under the last preceding Rule unless special circumstances be shown upon affidavit, such as it being known to be his intention to abscond.

This Rule is new, but follows existing practice.

The writ of *certiorari* discharges the recognizances in the Court below: *R.* v. *Richardson*, 2 Leach, C. C., 560, cited in *R.* v. *Holden*, 5 B. & A. 349; *R.* v. *Boxall and Others*, 4 A. & E. 513.

When defendaut under

90. When any information is filed and the defendant is under terms to appear immediately and does not enter an

appearance, the prosecutor may serve a notice upon the defendant to appear within five days, and in default of appearance may move the Court ex parte for leave to enter an appearance for him, or if the notice was personally served for an attachment. Rr. 90–93. terms to appear.

This Rule is new, but follows existing practice. When an order *nisi* for an information is enlarged it is usual to put the defendant under terms to appear immediately in the event of the order being made absolute.

91. If the defendant on any indictment or inquisition for misdemeanor, or information, wishes to avoid arrest upon a warrant, he may give 24 hours' notice of bail to the prosecutor, and enter into a recognizance before a Judge or justice of the peace with sufficient surety or sureties to appear and answer the indictment, inquisition, or information, and personally appear at the trial, and on the return of the postea if it be necessary, and so from day to day, and not depart without leave of the Court. Bail to avoid arrest.

This Rule is new, but affirms existing practice.
Form of Recognizance, No. 48, p. 188.

92. If the defendant be taken on a warrant he shall give 24 hours' notice of bail, and enter into a recognizance as in the last preceding rule mentioned before he can be discharged. Bail after arrest.

93. If any defendant to an indictment or inquisition for misdemeanor, or information, shall be detained in any prison for want of bail, the prosecutor of any such indictment, inquisition, or information, may cause a copy thereof to be delivered to the gaoler of the prison for such defendant, with a notice endorsed thereon that if the defendant do not within eight days after such delivery cause an appearance and a plea or demurrer to be entered to such indictment, inquisition, or information, an appearance and plea of not guilty will be entered for him; and if the defendant do not enter such appearance and plea or demurrer within eight days from the delivery of such copy of the indictment, inquisition, or information and notice, the prosecutor, upon Entry of appearance by prosecutor for defendant in custody.

R. 93–97. filing an affidavit of the delivery of such copy and notice endorsed thereon to the keeper or gaoler as aforesaid, may cause an appearance and plea of not guilty to be entered to the indictment, inquisition, or information for the defendant, and proceedings shall be had thereon as if the defendant himself had duly appeared and entered such plea.

Taken from 48 Geo. 3, c. 58, s. 1.

Venire facias and *subpœna* to answer.

94. When any indictment has been found in, or removed into the Queen's Bench Division at the instance of the prosecutor, or of one or more of several defendants, the prosecutor may, instead of applying for a warrant under Rules 85, 86, 87, issue a writ of venire facias against such defendants as are not parties to the removal of the indictment, or defendants under recognizance to answer, or in the case of an information may issue either a subpœna to answer, or a venire facias if it is intended to proceed to outlawry.

This Rule is new, but affirms the practice followed in the majority of cases in the Queen's Bench Division, as very few being of a nature to call for the more stringent process by warrant. In cases of felony a *capias* may issue in the first instance against defendants not under recognizance: see Rule 97. Form of Subpœna, No. 51, *post*, p. 189; Form of *Venire Facias*, No. 52, *post*, p. 190. As to proceedings in Outlawry, see Rules 99 to 112, *post*, pp. 48—51.

Attachment for non-obedience to *subpœna* to answer.

95. If the defendant does not appear within four days after the day named in the subpœna to answer, the prosecutor upon filing an affidavit of due service of the subpœna to answer may issue a writ of attachment.

Form of Affidavit of Service, No. 53, *post*, p. 190.
Writ of Attachment, Nos. 54 and 55, *post*, pp. 190, 191.

Distringas.

96. If a defendant fails to appear within four days after the sheriff has returned to the Court on the venire facias that he has summoned the defendant, the prosecutor may issue a writ of distringas.

Form of Distringas, No. 56, *post*, p. 191.

Capias ad res.

97. If a defendant fails to appear within four days after

the sheriff has returned to the Court, that he has distrained the lands and chattels of the defendant, the prosecutor may issue a writ of capias ad respondendum, and if necessary further proceed to outlawry as hereinafter provided by these Rules; provided always, that in felony, if the defendant has not been admitted to bail, the prosecutor may issue a writ of capias in the first instance. Rr. 97, 98.

Form of *capias*, No. 57, *post*, p. 191.

98. The process against a body corporate, or inhabitants of a county, borough, parish, or place, to compel an appearance shall be by writs of venire facias and distringas. If such defendants do not appear within four days after the sheriff has returned that he has distrained the defendants' land and chattels, alias and pluries writs of distringas may be issued with such increased amounts upon each succeeding writ as the Court or a Judge may order. Process against a body corporate, &c.

This rule affirms the existing practice. In a case before Willes, J., when the defendants had not appeared in obedience to a writ of *distringas*, and the prosecutor took out a summons for a second writ of *distringas* to issue with the increased amount of £100, upon cause being shown, the learned judge said that if £1000 had been asked for he would have granted it: *R.* v. *Birkenhead Street Railway Company*, 22nd July, 1862.

OUTLAWRY.

Proceedings in outlawry in criminal cases have of late become exceedingly rare, so rare indeed that they may almost be said to be extinct. In civil proceedings they have been wholly abolished by 42 & 43 Vict. c. 59. The last case which has occurred on the Crown's side of the Queen's Bench was in 1859: *R.* v. *Tempest*. In that case, all the writs necessary to outlawry were issued, but the judgment itself was not completed by the entry of it at the Crown Office, and upon the defendant surrendering himself in 1866, and entering an appearance to the information, a Judge in Chambers superseded the proceedings 7th December, 1866. The defendant pleaded guilty, and was sentenced to three months' imprisonment as a first class misdemeanant in Whitecross Street Prison. Nevertheless, outlawry, whether on mesne or final process, is still an integral part of the criminal law, and the following rules provide the

Rr. 98–102.

course of procedure should it be required in any future case. It lies in all cases where a *capias* lies : 2 Hawk, c. 27, s. 109.

Proceeding to outlawry before judgment.

99. To proceed to outlawry before judgment on an indictment for misdemeanor, or an information, the prosecutor must issue a writ of venire facias at the Crown Office returnable on a day certain either in or out of the sittings.

In felony a *capias ad respondendum* may be issued at once instead of the *venire:* see Rule 109, *post*, p. 51.

Form of *Venire*, No. 52, *post*, p. 190. *Distringas*, No. 56, *post*, p. 191.

Distringas or *capias* on non-appearance.

100. On the return of the sheriff that he has summoned the defendant, and the defendant has not appeared, the prosecutor may issue a distringas to answer, returnable on a day certain either in or out of the sittings, and if necessary alias writs of distringas, and if the sheriff return that the defendant has no goods in his bailiwick whereby he can be summoned, or distrained, a capias ad respondendum tested, and made returnable as the writ of venire facias, may be issued on the fourth day after the return.

See 6 Hen. 6, c. 1.

Form of *Capias*, No. 57, *post*, p. 191.

Under the former practice, for the purpose of proceeding to outlawry, it was necessary to teste the *writ of capias* on the return day of the previous process, and make it returnable on the first day of the next term, and so on with the subsequent writs : see Corner's Crown P. 240 and 242. As to the return of the *capias* after judgment, compare Rule 110, *post*, p. 51.

Alias and *pluries* writs of *capias*.

101. On the return of non est inventus to a capias ad respondendum, before the prosecutor can proceed further, he shall issue a second writ of capias on the fourth day after the return to the first, made returnable as the first writ, and shall issue a third writ of capias on the fourth day after the return of the second, tested and made returnable, as the second writ.

See 6 Hen. 6, c. 1.

Capias cum proclamatione

102. If the defendant is dwelling in another county than where the indictment was found, or where the information

Rr. 102–105.

be laid, the prosecutor shall issue another second writ of capias cum proclamatione to the sheriff of the foreign county after the return of the first writ to the sheriff of the county in which the indictment was found, or information laid, tested as the other writs of capias, but not to be made returnable till such a day certain as will enable the sheriff of the foreign county, if he cannot be found, to make proclamation at two of his county courts either three months, or four months, after the issue of the writ according as the sheriff may hold his courts from month to month, or six weeks to six weeks. into foreign county.

Taken from 8 Hen. 6, c. 10, and 10 Hen. 6, c. 6; see also 6 Hen. 6, c. 1.

For Form of this Writ, see No. 60, *post*, p. 193.

103. Upon a return of non est inventus to the third writ of capias in the same county, and if the defendant be dwelling in another county to the capias to the sheriff of such county, a writ of exigent must be issued by the prosecutor. Writ of *exigent.*

Form of Exigent, No. 59, *post*, p. 192.

104. Simultaneously with the writ of exigent a writ of proclamations shall be issued to the sheriff of the county where the defendant is mentioned to be, or inhabit; both writs must be tested on the day of the return to the previous process, and returnable on such a day certain during the sittings, as will admit of their being delivered to the sheriff three months before return. Writ of proclamations.

Taken from 4 & 5 Will. & M. c. 22, s. 4.

Form of Writ, No. 58, *post*, p. 192.

Judgment of outlawry for not appearing to indictment for high treason was reversed in error, after a lapse of 116 years, by co-heir out of the outlaw, because it did not appear on the record that proclamations had been made, or the writ of proclamations issued: *Tynte* v. *The Queen* (*in error*), 7 Q. B. 216.

105. If it does not appear by the return to the writ of exigent that the defendant has been exacted five times and outlawed, the prosecutor must issue another writ of exigent with allocatur, commanding the sheriff to cause him to be *Exigent* with *allocatur.*

Rr. 105–109.

further exacted until he shall have been exacted five times and outlawed.

Form of Writ, No. 61, *post*, p. 193.

Entry of judgment of outlawry.

106. Upon the return of the sheriff that the defendant has been exacted five times and outlawed, on application of the prosecutor judgment may be entered at the Crown Office.

The returns should be very exact and particular in stating the County Courts to have been Courts of the county, and to have been holden for the county, and in the county: see *R.* v. *Wilkes*, 4 Burr. 2564, 2565.

For Forms of Returns, see 4 Chit. Cr. L. pp. 216 to 232; and *Wright* v. *The Queen*, 14 Q. B. 148, Exch. Ch.

Roll of proceedings.

107. After judgment has been entered, the roll of all the proceedings may be engrossed by the prosecutor, and filed at the Crown Office.

The roll is to be drawn in the same form as a record for trial up to and including the award of the *venire* (see Forms Nos. 91 and 92, *post*, pp. 205, 206), then adding the return thereto, a recital of each subsequent writ and the returns thereto (see 3 Chit. Cr. L. pp. 218, 231), and the judgment of outlawry thereon, as follows—

Therefore, by the judgment of *X. Y.*, coroner of our said Sovereign Lady the Queen, for the said county of *D.*, the said *A. B.* according to the law and custom of England is outlawed.

The answer of *G. H.*, Esquire, Sheriff.

See also Form in *Wright* v. *The Queen*, 14 Q. B. 148, Ex. Ch.

Capias utlagatum.

108. A writ of capias utlagatum may be issued by the prosecutor at any time the defendant is likely to be found, or a like writ special, cum breve de inquirendo, or if necessary a writ of melius inquirendum may be applied for.

The outlawry is complete on the return of the *exigent* (see Rule 106), and the *capias utlagatum* may thereupon issue, or a judge's warrant may be obtained: see 4 Chit. Cr. L. 232.

Forms Nos. 62, 63, and 64, *post*, p. 194.

Application of Rules to felony.

109. All the Rules as to proceeding to outlawry on indictment in misdemeanor before judgment, shall apply to indictment for felony, except that in felony the prosecutor may

issue a writ of capias ad respondendum at once, instead of a venire facias to answer. Rr. 109–114.

See 25 Edw. 3, c. 14.

110. On proceeding to outlawry after judgment on indictment for felony or misdemeanor or information, the prosecutor may issue a writ of capias ad satisfaciendum into the county where the indictment is found, or information laid, returnable on the first day of the then next sittings. One writ of capias only need be issued, and on return of non est inventus, the prosecutor may issue a writ of exigent tested on the return day of the writ of capias, returnable on the first day of the then next sittings. It shall not be necessary to issue any writ of proclamations on the return of a writ of capias ad satisfaciendum. Outlawry after judgment.

For Form of *capias ad satisfaciendum* after judgment, see No. 144, App. p. 228.
For Form of Exigent after judgment, see No. 65, App. p. 195.

111. After the return to the writ of exigent, the Rules as to proceeding after writ of exigent in outlawry before judgment shall apply to proceedings in outlawry after judgment. Proceedings after judgment.

112. In the county of Lancaster the capias utlagatum and all subsequent process shall be directed to the Chancellor of the Duchy. Direction of *capias* in Lancashire.

See 5 & 6 Edw. 6, c. 26.

REVERSAL OF OUTLAWRY.

113. It shall not be necessary for any person who shall be outlawed before conviction for any matter or thing except treason or felony to appear in person to reverse such outlawry, but such person may appear by solicitor and reverse the same. Personal appearance to reverse outlawry before conviction unnecessary.

See note to "Outlawry," p. 47; and 4 & 5 Will. & M. c. 18, s. 3.

114. If any person outlawed otherwise than for treason, or felony, before conviction be taken and arrested upon any Solicitors undertaking to ap-

Rr. 114–119.

pear for defendant.

capias utlagatum, the sheriff may take a solicitor's engagement under his hand to appear for the defendant, and shall thereupon discharge the defendant from the arrest.

See 4 & 5 Will. & M. c. 18, s. 4.

Bail and *supersedeas* when outlawry not complete.

115. If a defendant surrenders or is taken before outlawry is complete on misdemeanor before judgment, he may give bail in such amount, and with or without sureties, as a Judge may direct, to appear to the indictment, inquisition, or information, and on appearance apply to the Court or a Judge for a supersedeas to the process of outlawry.

Immediate plea on reversing outlawry before judgment.

116. If a defendant comes in on an indictment or information for misdemeanor, and reverses the outlawry before judgment, he shall plead instanter.

See *R.* v. *Wilkes*, 4 Burr. 2533; *R.* v. *Hill*, 5 Mod. 141.

Committal to answer on outlawry after judgment.

117. On an indictment or inquisition for felony, or in any case after judgment, a defendant who surrenders or is taken before the outlawry is complete, shall be committed to answer the indictment or inquisition or to satisfy the judgment, but may supersede the outlawry process.

Reversal of outlawry after conviction.

118. To reverse outlawry after conviction the defendant shall surrender himself into custody, and afterwards be brought into Court to assign errors upon the judgment in outlawry, by habeas corpus.

As to error to reverse outlawry, see note to next Rule.

Writ of error to reverse outlawry.

119. If the defendant be taken on a capias utlagatum, he shall deliver the writ of error into Court when he appears upon the return to the capias, he shall then move for an order to bring him up again to assign errors, and shall be committed by the Court to the Queen's Prison.

When the outlawry is complete it can only be reversed upon a writ of error to be obtained in the same manner as other writs of error, see *post*, title, "Error." In offences under treason or felony, the writ of error is of right on probable cause being assigned, and ought not to be denied, but will not be granted by the Attorney-

General until the defendant has surrendered to the outlawry. (Per Lord Mansfield, C. J., in *R.* v. *Wilkes*, 4 Burr. 2549 and 2550.) Unless some real error be assigned, the Court will not permit the prosecutor to confess error in law, as the judgment thereon would create a precedent; but it is otherwise as regards error in fact, should the prosecutor be disposed to aid in reversing the outlawry: *ib.* 2551. The writ of error must be delivered in Court upon the return to the *capias utlagatum;* and it would seem the defendant cannot appear voluntarily for the purpose: *R.* v. *Wilkes*, 4 Burr. at p. 2534. The writ of error may then be allowed by the Court, and the defendant committed.

Rr. 119–122.

For Form of Writ of Error, see No. 66; for Assignment of Error, No. 67, *post*, p. 195.

120. Until outlawry be reversed a defendant after conviction shall not be committed, or called up for judgment upon an indictment, information, or inquisition.

No committal on indictment until outlawry reversed.

See *R.* v. *Wilkes*, 4 Burr. 2533.

121. Upon the assignment of error in outlawry the prosecutor shall join in error within eight days, and the case may then be entered in the Crown paper for argument on the application of either party as in error to the Queen's Bench Division from inferior courts.

Assignment of errors and joinder.

See *post*, title "Error."
Form of Joinder, No. 68, *post*, p. 196.

BAIL.

122. Applications for bail in felony or misdemeanor where the party is in custody shall be in the first instance by summons before a Judge at Chambers for a writ of habeas corpus, or to show cause why the defendant should not be admitted to bail either before a Judge at Chambers or before a justice of the peace, in such an amount as the Judge may direct.

Application for bail.

This rule affirms the existing practice, but the proceeding by *habeas corpus* has seldom been used of late years, the procedure by summons being much more convenient.

The power of admitting persons to bail by justices of the peace

Rr. 122–124.

is regulated by 11 & 12 Vict. c. 42, ss. 21 and 23; but the statute does not apply to treason. Coroners have jurisdiction to bail persons charged with manslaughter, but not murder; 22 Vict. c. 33.

The Queen's Bench Division, as also the Judges thereof at Chambers, have a paramount jurisdiction in admitting to bail persons charged with any crime whatsoever, whether it be treason, murder, or any other offence, having authority to bail, not only in cases where the charge is originally before them, but also in cases where it is brought before justices of the peace and bail is there refused: Stephen's Blackstone, 17th Ed., Vol. IV., p. 357.

Doubts have been entertained as to whether this power of the Queen's Bench applies to persons under remand, two learned Judges having held that it does (*R.* v. *Bennett*, *per* Lush, L.J., reported in 49 L. T. newspaper, p. 387, and *R.* v. *Atkins*, *per* Brett, J., now Lord Esher, M.R., also reported in the same volume of the L. T. p. 421); but in a case where Mathew, J., had refused to bail at Chambers a defendant under remand for misdemeanor, the Court, coram Pollock, B., and Lopes, J., on appeal decided that a defendant under remand on a charge of misdemeanor had no right to bail under 11 & 12 Vict. c. 42, until committal; and further, that if the Judge had jurisdiction to bail, he should be very careful not to interfere with the discretion of the magistrate, and in that instance, saying, if they had any discretion, they refused to exercise it: *Ex parte Mullins*, 24th Jan. 1884.

For the requisite Forms on applications for bail, see App., Nos. 69 to 77, pp. 196—200.

RECOGNIZANCES.

Filing recognizance.

123. Every recognizance acknowledged on the removal of an indictment, order, or other proceeding, or to prosecute any information granted by the Queen's Bench Division, or for the appearing or answering of any party in the said Division, or for good behaviour, or for any other purpose, shall after the acknowledgment thereof be transmitted to the Crown Office and filed there.

Taken from Rule 24 of Crown Office Rules of Hilary Term, 1884.

Estreating recognizance.

124. No recognizance shall henceforth be forfeited, estreated, or put upon the estreat roll without the order of the Court or a Judge, nor unless an order or notice shall have been previously served upon the parties by whom such

recognizances shall have been given, calling upon them to perform the conditions thereof, and no default shall be considered to be made in performing the conditions of a recognizance by reason of the trial of any indictment or presentment or the argument of any order or conviction or other proceeding having stood over where such indictment has been made a remanet, or such indictment or order has stood over by order of the Court, or by consent in writing of the parties. Rr. 124–127.

From Crown Office Rules of H. T. 1884, Rule 25.

125. Every recognizance to appear and answer to any indictment found in the Queen's Bench Division or removed into the same, or to any ex-officio or criminal information, shall, unless the Court or a Judge shall by order dispense therewith, contain, besides any other condition which may be imposed, a condition that the defendant shall personally appear from day to day on the trial of such indictment or information, and not depart until he shall be discharged by the Court before whom such trial shall be had. Condition for appearance upon trial and sentence.

Taken from Reg. Gen. of E. T. 1852.

126. Whenever it has been made to appear to the Court or a Judge that a party has made default in performing the conditions of any recognizance, into which he has entered, filed in the Crown Office, the Court or a Judge upon notice to the defendant and his sureties, if any, may order such recognizance to be estreated into the Exchequer without issuing any writ of scire facias. Estreat, how obtained.

This Rule embodies the provisions of 16 Vict. c. 32, s. 8, but in wider words, the Act only applying to certain specified recognizances.

SCIRE FACIAS.

127. No proceedings shall be taken in the Crown Office by scire facias upon recognizance. *Scire facias* on recogni-

Rr. 127–131.

zance abolished.

This Rule is new. All recognizances may now be estreated by the Court or a Judge upon motion: see last preceding Rule, and Rule 124, *ante*.

PLEADINGS.

(A.)—*Pleadings on Indictment, Information, or Inquisition.*

Title, date, and delivery of pleading.

128. Every pleading other than a plea of guilty or not guilty to an indictment, information, or inquisition shall be intituled: "In the High Court of Justice, Queen's Bench Division," and shall be dated of the day of the month and the year when the same was pleaded, and shall bear no other time or date. It shall be written or printed on paper, and a copy shall be delivered to the opposite party and be filed at the Crown Office.

This Rule introduces a very convenient change with regard to the dating of pleadings. Hitherto pleas were dated back to the first day of term (or since the Judicature Acts to the first day of the sittings) in which the plea was entered, all rolls being drawn up of the term (or sittings), and theoretically as of the first day.

Proceedings on roll, how dated.

129. All the proceedings shall be entered on the record made up for trial, and on the judgment roll, under the date of the month and year when the same respectively took place, and without reference to any other time or date, unless otherwise specially ordered by the Court or a Judge.

This Rule is new: see note to last preceding Rule.

Special plea or demurrer.

130. Every special plea or demurrer shall be in writing, and if settled by counsel signed by him, and if not so settled shall be signed by the solicitor or the party if he defends in person.

This rule is new. Hitherto the signature of counsel has been required to special pleas: see 1 Chitty's Cr. L. p. 448.

Orders to plead, &c.

131. One order only to plead, reply, rejoin, join in demurrer or in error, or plead subsequent pleadings in all prosecutions by way of indictment, inquisition, or information shall be given, and such order may be drawn up and served as well during the sittings as in vacation; and every

such order shall expire as follows, that is to say, every order to plead, in ten days next after service thereof, unless the time be extended by order of the Court or a Judge, and every order to reply, rejoin, join in demurrer, or in error, or plead subsequent pleadings in eight days next after service thereof, unless the time be extended as aforesaid.

Taken from Crown Office Rules of H. T. 1844, Rules 17 and 18, slightly varied.

These orders are drawn up, of course, without any motion: see *post*, Rule 252.

Plea in felony or treason.

132. In indictments for felony or treason the defendant shall plead in open Court in the Queen's Bench Division, unless he has obtained a Judge's order upon special circumstances, for liberty to appear and plead by solicitor in the Crown Office. On the appearance of a defendant to any indictment, inquisition, or information, an order to plead may be drawn up at the Crown Office by the prosecutor or his solicitor.

This Rule affirms the existing practice. As to order to plead, see last preceding Rule and note thereto.

Extending time to plead.

133. Time in which to plead may be extended on application by summons to a Judge at Chambers, upon such terms and for such time, as the Judge in his discretion may think fit.

(B.)—*Pleadings in Quo Warranto.*

Pleadings and subsequent proceedings in *quo warranto*.

134. When any information in the nature of a quo warranto has been filed, the defendant may plead to such information within such time, and in like manner as if the information were a statement of claim delivered in an action, and subject to these Rules this pleading and all subsequent proceedings, including pleadings, trial, judgment, and execution, shall proceed and may be had and taken as if in an action, and where the judgment is for the relator judgment of ouster may be entered for him in all cases.

This Rule is new. Compare Rule 136 as to *mandamus*, and see note to "Quo Warranto," *ante*, p. 29, as to how far *quo warranto* is a civil proceeding.

Form of judgment, No. 123, *post*, p. 218.

Rr. 135–137.

Plea in corporate cases that defendant has held the office for six years.

135. The prosecutor in answer to a plea that the defendant has held and executed the office or franchise for six years before the exhibiting the information may reply any forfeiture, surrender, or avoidance by the defendant within the said six years.

Taken from 32 Geo. 3, c. 58, s. 2, repealed as to boroughs within the Municipal Corporations Act, 1882. Under the latter Act an application for the information against any person claiming to hold a corporate office, cannot be made after the expiration of twelve months from the time of disqualification after election, 45 & 46 Vict. c. 50, s. 225 (1), *ante*, p. 29 : see also s. 73 of the same Act.

(C.)—*Pleadings in Mandamus.*

Pleadings and subsequent proceedings in *mandamus*.

136. When any return is made to the first writ of mandamus, the applicant may plead to the return within such time and in like manner as if the return were a statement of defence delivered in an action ; and subject to these Rules this pleading and all subsequent proceedings, including pleadings, trial, judgment, and execution, shall proceed and may be had and taken as if in an action.

Taken from Order LIII., Part 2, Rule 9, in somewhat different words. The wording of that Rule gave rise to a doubt as to whether a return of unconditional compliance to the writ might be pleaded to : see *R.* v. *Licensing Justices of Pirehill North*, 14 Q. B. D. 13 ; *S. C. sub nom. R.* v. *Staffordshire JJ.*, 54 L. J. M. C. 17, C. A.

The return itself is not a pleading and cannot be struck out under Order XXV. Rule 4 : *R.* v. *Cheshunt Local Board*, W. N. 18 March, 1884.

The effect of this Rule is to abolish the former mode of pleading by demurrer or traverse to the return. A demurrer can now only be pleaded in criminal proceedings.

(D.)—*Pleadings in Prohibition.*

Pleadings and subsequent proceedings.

137. Where pleadings in prohibition are ordered the pleadings and subsequent proceedings, including judgment and assessment of damages, if any, shall be, as nearly as may be, the same as in an ordinary action for damages.

Taken from Order LXVIII., Rule 3.

COPIES OF PROCEEDINGS AND SERVICE.

Rr. 138–141.

138. Copies of all informations, indictments, or presentments, and of all pleadings thereupon, and of mandamus and return and traverse or other pleadings thereupon, and of convictions, orders, and every other proceeding filed in the Crown Office shall, when required, be made at the Crown Office and delivered to the respective parties or other parties requiring the same on payment of the proper charges. Office copies.

Taken from Crown Office Rules of H. T. 1844, Rule 15.

139. Whenever under these Rules service of any writ, notice, pleading, order, summons, warrant, or other document, proceeding, or written communication, is not directed to be personal, service at the last known place of abode, or business, with a clerk, wife, or servant, or upon such other person, or in such other manner as the Court or a Judge may direct, shall be deemed to be a sufficient service. Service of proceedings.

This Rule affirms the existing practice.

SPECIAL CASES AND DEMURRERS.

The provisions of Order XXXIV. (special case), were previously applied as far as applicable to all civil proceedings by Order LXVIII., Rule 2, and are subjoined after Rule 142, *infra*.

140. Order XXXIV. of the Rules of the Supreme Court, 1883 (special case), shall, as far as it is applicable, apply to all civil proceedings on the Crown side.

The following Rules shall apply to all criminal proceedings:—

As to what are criminal and what civil proceedings, see note to Rule 216, *post*, pp. 86, 87.

141. Demurrers and special cases shall be entered at the Crown Office for hearing at the request of either party without any order for a concilium eight clear days before the day on which they are set down for argument, and notice thereof shall be given forthwith to the opposite party. Entry of demurrers and special cases.

Rr. 141, 142.

This Rule abolishes the Rule for a *concilium* upon which special cases have hitherto been set down.

In consequence of the pleadings on Mandamus, Quo Warranto and Prohibition having been assimilated to the pleadings in an action, demurrers only remain in criminal proceedings such as indictment, information, and inquisition.

Form of case.

142. Every special case shall be divided into paragraphs, which as nearly as may be shall be confined to a distinct portion of the subject, and every paragraph shall be numbered consecutively. The taxing officer shall not allow the costs of drawing and copying any special case not substantially complying with this rule without the special order of the Court.

Compare Order XXXIV., Rule 1, *infra*.

O. XXXIV. rr. 1, 2.

ORDER XXXIV.

I.—Special Case.

Case by consent. Form of it.

1. The parties to any cause or matter may concur in stating the questions of law arising therein in the form of a special case for the opinion of the Court. Every such special case shall be divided into paragraphs numbered consecutively, and shall concisely state such facts and documents as may be necessary to enable the Court to decide the questions raised thereby. Upon the argument of such case the Court and the parties shall be at liberty to refer to the whole contents of such documents, and the Court shall be at liberty to draw from the facts and documents stated in any such special case any inference, whether of fact or law, which might have been drawn therefrom if proved at a trial.

Case by order of Court or Judge.

2. If it appear to the Court or a Judge, that there is in any cause or matter a question of law, which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried, or before any reference is made to a referee or an arbitrator, the Court or Judge may make an order accordingly, and may direct such question of law to be raised for the opinion of the Court, either

by special case, or in such other manner as the Court or Judge may deem expedient, and all such further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed.

Printing, signing, and copies for Judges.

3. Every special case shall be printed by the plaintiff, and signed by the several parties or their counsel or solicitors, and shall be filed by the plaintiff. Three printed copies for the use of the Judges shall be left therewith.

The regulations as to printing contained in Order LXVI., Rule 7, are not applied to the Crown side, but would probably be followed where necessary.

Persons under disabilities.

4. No special case in any cause or matter to which a married woman, (not being a party thereto in respect of her separate property or of any separate right of action by or against her,) infant, or person of unsound mind not so found by inquisition is a party, shall be set down for argument without leave of the Court or a Judge, the application for which must be supported by sufficient evidence that the statements contained in such special case, so far as the same affect the interest of such married woman, infant, or person of unsound mind, are true.

This Rule appears to apply only to Chancery procedure.

Entry of special case.

5. Either party may enter a special case for argument by delivering to the proper officer a memorandum of entry, in the Form No. 25 in Appendix G., and also if any married woman, infant, or person of unsound mind not so found by inquisition be a party to the cause or matter, producing a copy of the order giving leave to enter the same for argument.

The following is the form referred to :—

Appendix G. No. 25.

ENTRY OF SPECIAL CASE.

[*Heading as in Form* 1.]

Set down the dated the day of
18 of Mr. the
referee in this for hearing as a special case.
Dated the day of 18

(Signed)
(Address)

O. XXXIV. rr. 6–9.

Agreement as to payment of money or costs.

6. The parties to a special case may, if they think fit, enter into an agreement in writing, which shall not be subject to any stamp duty, that, on the judgment of the Court being given in the affirmative or negative of the questions of law raised by the special case, a sum of money, fixed by the parties, or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, either with or without costs of the cause or matter; and the judgment of the Court may be entered for the sum so agreed or ascertained, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless stayed on appeal.

7. This Order shall apply to every special case stated in a cause or matter, or in any proceeding incidental thereto.

8. (*Statement of case* 13 & 14 *Vict. c.* 35. *Applies only to Chancery proceedings.*)

II.—Issues of Fact without Pleadings.

How stated for trial.

9. When the parties to a cause or matter are agreed as to the questions of fact to be decided between them, they may, after writ issued and before judgment, by consent and order of the Court or a Judge, proceed to the trial of any such questions of fact without formal pleadings; and such questions may be stated for trial in an issue in the Form No. 15, in Appendix B., with such variations as circumstances may require, and such issue may be entered for trial and tried in the same manner as any issue joined in an ordinary action, and the proceedings shall be under the control and jurisdiction of the Court or Judge, in the same way as the proceedings in an action.

The following is the form referred to:—

Appendix B. No. 15.

Issue.

[*Heading as in Form* 1.]

Whereas *A.B.* affirms, and *C.D.* denies [*here state the question or*

questions of fact to be tried], and it has been ordered by the Hon. Mr. Justice that the said question shall be tried [*here state mode of trial, whether with or without a jury*], therefore let the same be tried accordingly. O. XXXIV. rr. 9–12.

10. The Court or a Judge may by consent of the parties order that, upon the finding in the affirmative or negative of such issue as in the last preceding Rule mentioned, a sum of money, fixed by the parties, or to be ascertained upon a question inserted in the issue for that purpose, shall be paid by one of the parties to the other of them either with or without the costs of the cause or matter. Judgment and costs.

11. Upon the finding on any such issue, as in Rule 9 mentioned, judgment may be entered for the sum so agreed or ascertained as aforesaid, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless the Court or a Judge shall otherwise order for the purpose of giving either party an opportunity for moving to set aside the finding or for a new trial. Entry of judgment, execution and new trial thereon.

12. The proceedings upon such issue, as in Rule 9 mentioned, may be recorded at the instance of either party, and the judgment, whether actually recorded or not, shall have the same effect as any other judgment in a contested action. Record and effect of judgment.

PAPER BOOKS.

143. In all cases entered for argument in the Crown Paper, where paper books are required, the party or solicitor entering shall, two days before the day appointed for argument, deliver two paper books of the proceedings for the use of the Judges at the Crown Office. R. 143. Copies for the use of the Judges.

Compare Order XXXIV., Rule 3, *ante*, p. 61.

Paper books are required upon the argument before the Divisional Court on any of the following proceedings :—

(*a*) On seeking to quash any order or other proceeding removed by *certiorari* (see next Rule).

(*b*) On the argument of demurrers or questions of law.

(*c*) On the argument of special cases or special verdicts.

(*d*) On proceedings in error.

Rr. 144–147.

How marked.

144. Such paper books shall be marked "for the use of the Judges in the Queen's Bench Division," and not with the name of any particular Judge.

Contents.

145. Such paper books shall contain, where the party is seeking to quash any order or conviction, together with the copies of the proceedings, a copy of the order nisi to quash.

See also r. 197, *post*, p. 80, as to the contents of paper books on proceedings in error.

It is important to note that points for argument are no longer required in any case, and consequently the costs of preparing them are never allowed upon taxation.

Default in delivering.

146. If paper books are not delivered, the other party may, on the day following, deliver such copies as ought to have been so delivered by the party making default, and the party making default shall not be heard until he shall have paid for such copies or deposited at the Crown Office a sufficient sum to pay for the same. In default of both parties the case shall be struck out, unless otherwise ordered.

Who to begin on argument.

147. On the argument of any case entered in the Crown Paper, where the Court has granted an order nisi, the counsel for the parties showing cause shall begin; but on an order nisi to quash an order or conviction, and in every other case the counsel for the appellant or party desirous of displacing the status quo shall begin.

Upon showing cause against an order *nisi* (except upon an order *nisi* to quash any proceeding of an inferior tribunal), there is no reply by the party who begins. In the case of the foregoing exception, and in all other cases, the party who begins has a reply.

On the argument upon an order *nisi*, all the counsel instructed on both sides may be heard: but upon a special case only one counsel is heard on each side, except when the case is stated upon an order of sessions, when it is brought before the Court upon an order *nisi* to quash.

Upon a demurrer, the party demurring begins and replies. Upon cross demurrer, it would seem that the party first demurring should begin (*Redway* v. *Sweeting*, L. R. 2 Ex. 400; 36 L. J. Ex. 185: but see *contra*, *Churchward* v. *The Queen*, L. R. 1 Q. B. at p. 183). One counsel only on each side will be heard.

Upon error, the plaintiff in error begins and replies, only one counsel being heard on each side; but in a case where there were several defendants in one indictment charged with different illegal acts, and

on conviction brought separate writs of error to the House of Lords, it was held that they were entitled to appear by separate counsel, and that such counsel were severally entitled to reply : *O'Connell* v. *The Queen*, 11 C. & F. 155 ; 9 Jur. 25. Rr. 147–153.

NOTICE OF TRIAL.

148. Notice of trial shall state the place at which the trial is to be had, and the day on or after which the record is to be tried. Form of notice of trial.

For Forms of Notices of Trial, see *post*, Nos. 88 to 90, App. pp. 204, 205.

149. If the prosecutor or relator does not, within six weeks after issue joined, or within such extended time as the Court or a Judge may allow, give notice of trial, the defendant may give such notice, and when the defendant is bound by recognizance to give notice of trial the prosecutor may, in all cases, give notice by proviso. Notice of trial by opposite party.

150. Ten days' notice of trial shall be given in all cases, unless a longer notice shall be ordered by the Court or a Judge, or the party to whom it is given shall consent to take short notice of trial, which shall be understood to mean four days' notice or any longer period. Length of notice.

151. Notice of trial shall be given before entering the record for trial. When notice to be given.

This Rule is taken from Order XXXVI., Rule 15.

152. Notice of trial for London or Middlesex shall not be, or operate as for, any particular sittings, but shall be deemed to be for the day stated in the notice, or for any day after the expiration of the notice, on which the record may come on for trial. Notice for London or Middlesex.

Same as Order XXXVI., Rule 17.

153. Notice of trial elsewhere than in London or Middlesex shall be deemed to be for the first day of the then next assizes, at the place for which notice of trial is given. Notice for the assizes.

Same as Order XXXVI., Rule 18.

Rr. 154–157.

Countermanding notice of trial.

154. No notice of trial shall be countermanded, and no record withdrawn except by leave of the Court or a Judge, which leave may be given subject to such terms as to costs or otherwise as may be just.

Taken from Order XXXVI., Rule 19.

CONTINUANCES.

Continuances abolished.

155. No continuance by way of imparlance, curia advisari vult, vicecomes non misit breve, or otherwise, shall be necessary, nor shall any entry thereof be made, upon any record, or roll whatever, or in the pleadings.

The provisions of this Rule are new, and effect a very beneficial change in Crown cases. It is in much the same form as Reg. Gen. of Trinity Term, 1853, Rule 30, which abolished Continuances in Civil Actions.

ENTERING RECORD FOR TRIAL.

When defendant may enter record.

156. If the prosecutor or relator, after having given notice of trial for London or Middlesex, does not enter the record within six days, the party to whom notice may have been given shall be at liberty to enter it with the leave of the Court or a Judge.

Compare Order XXXVI., Rule 20.

The record for trial must be lodged with the proper associate or master, and the trial entered in the same manner as actions are entered for trial, and the same practice must be adopted as is necessary to be observed in regard thereto under Order XXXVI., as far as it may be applicable, no separate rules having been provided for the proceedings on the Crown side.

For Form of Record, see Nos. 91 to 93, pp. 205, 206.

Abolition of warrant of *nisi prius*.

157. No warrant of nisi prius from the Attorney-General for making up a record shall hereafter be necessary.

This Rule is new. Hitherto it has been necessary in all criminal cases to obtain the warrant of the Attorney-General to make up a record of *nisi prius*.

R. 158.

JURY.

158. Writs of venire facias, or other writs for the summoning of juries, shall no longer be used, but the jury whether special or common, shall be taken from the list of persons summoned for the sittings or assizes, and a panel shall be annexed to the record as in civil cases. Either the prosecutor or the defendant may, except in case of felony, obtain a special jury upon giving the like notice as is required in civil cases, and the Court or a Judge may, at the instance of either party, order that a special jury be struck as provided for by "The Juries Act, 1870." And when the jury has been reduced either party may draw up an order at the Crown Office directing the sheriff to summon that particular jury at such time and place as may be required. Jury, how obtained.

This Rule assimilates the practice as far as practicable to that in civil proceedings.

Hitherto a special jury (except on *mandamus*) was obtained by drawing up a rule on counsels hand (signature) to a motion paper for that purpose.

The provisions with reference to giving notice for a special jury are contained in Order XXXVI., Rule 7 (*b*) and (*c*), and are subjoined.

(*b.*) The plaintiff in any cause or matter in which he is entitled to a jury may have the issues tried by a special jury, upon giving notice in writing to that effect to the defendant at the time when he gives notice of trial:

(*c.*) The defendant, in any cause or matter in which he is entitled to a jury, may have the issues tried by a special jury, on giving notice in writing to that effect at any time after the close of the pleadings or settlement of the issues and before notice of trial, or if notice of trial has been given, then not less than six clear days before the day for which notice of trial has been given.

As to the mode of obtaining a special jury under the old practice, see The Juries Act of 1870 (33 & 34 Vict. c. 77, s. 17); and 6 Geo. 4, c. 50, ss. 30, 36. See also Common Law Procedure Act, 1852, s. 108. A special juryman struck under this practice cannot be challenged at the trial: *R.* v. *Despard*, 2 M. & R. 467.

In criminal cases if it is desired to pray *a tales*, a warrant must be obtained from the Attorney-General for the purpose (Form No. 102,

Rr. 158 160.

post, p. 209), which is usually granted, of course, except in cases prosecuted by the Government, in which cases the Attorney-General may withhold it. *A tales* of bystanders can only be had by virtue of such warrant (2 Hawk. P. C. c. 41, s. 18; *R.* v. *Edwards*, 14 L. T. O. S. 471), not by common jurors as on the civil side. It may be prayed, or not, at discretion, and must be produced, if prayed, at the time the jury is called. If no *tales* is prayed, and the cause goes off for want of a jury, neither party is liable to the other's costs of the day: *R.* v. *Righton*, 3 Burr. 1694.

VIEW.

Costs of view.

159. Upon any application for a view there shall be an affidavit stating the place at which the view is to be made, and the distance thereof from the office of the under-sheriff, and the sum to be deposited with the under-sheriff shall be 10*l.* in case of a common jury, and 16*l.* in case of a special jury, if such distance do not exceed five miles, and 15*l.* in case of a common jury, and 21*l.* in case of a special jury, if it be above five miles. And if such sum shall be more than sufficient to pay the expenses of the view, the surplus shall forthwith be returned to the solicitor of the party who obtained the view. If such sum shall not be sufficient to pay such expenses the deficiency shall forthwith be paid by such solicitor to the under-sheriff, and the under-sheriff shall pay and account for the money so deposited, according to the scale at the end of the Appendix to these Rules.

This Rule is taken from Reg. Gen. of Hilary Term, 1853, Rule 49. For Scale of Allowances, see App., p. 251.

TRIAL AT BAR.

Order for trial at bar.

160. A trial at Bar shall not be had except by order of the Court.

161. An application for a trial at Bar shall be by motion for an order nisi except when made by the Attorney-General on behalf of the Crown, when the order shall be absolute in first instance as of course.

Application for trial at bar.

The Court (except when moved for by the Attorney-General on behalf of the Crown) requires very sufficient and strong grounds to be shown upon affidavits to induce them to grant a trial at bar. It should be shown that the matter at issue is of great public importance, or involves large and important interests, and that great legal difficulties are likely to arise, and if possible the particular difficulties expected to arise should be stated: see 2 Dougl. 437; *R.* v. *Amery*, 1 T. R. 363; *Lord Sandwich's Case*, 2 Salk. 648.

It has been granted to a Judge of a Superior Court and to a Master in Chancery, as a matter of course, without an affidavit. It is said the Court will not refuse it where an officer of the Court (*R.* v. *Astrey, Clerk of the Crown*, 2 Salk. 651; 6 Mod. 123) or a barrister, is a party, but this seems to be questionable: see Tidd's Pract., 9th Ed. 749.

It may not be moved for before issue is joined: 1 Str. 696.

162. On making the order absolute for a trial at Bar the Court may impose such terms on the applicant as to payment of costs, or otherwise, as the Court may think fit.

Terms as to costs on ordering trial at bar.

This Rule affirms the existing practice: see 2 Dougl. 437; Tidd's Pract. 750.

163. The Court may direct the jury to be summoned from the county in which the offence was committed or from any other county not exempt by law at any time after joinder of issue. The order for the jury shall be lodged with the sheriff of such county in sufficient time for the jury to be summoned six days before the trial.

Summoning of jury on trial at bar.

This Rule is new, and introduces more or less important changes. It provides for the summoning of the jury without any writ of *veneri facias juratores* hitherto necessary (compare Rule 158). The rule is silent as to entering a suggestion on the record to procure a jury from any other county not exempt by law than that in which the offence was committed, but a suggestion must still be entered before the jury be summoned; this is now the practice remaining in force, and no other provision is made by these Rules in respect of it. If not done it would probably be error on the record.

Rr. 164–166.

Copies of roll for use of the Judges.

164. Three copies of the roll upon which the trial is to take place shall be delivered by the applicant for the trial at Bar at the Crown Office for the use of the Judges four days before the day fixed for the trial.

For Form of Roll see No. 112, App., p. 213, which must be made up as far as the award of the jury.

Continuance and adjournments of trial at bar.

165. A trial at bar may be continued, de die in diem, or adjourned to a subsequent day at any time, in the discretion of the Court, without any reference to the sittings of the High Court, and no formal order shall be drawn up for any such continued sitting or adjournment nor shall any such order be entered on the roll.

The provisions of this Rule are new. Formerly a trial at bar could only be had in term, and provision was made by 1 Wm. 4, c. 70, s. 7, for days to be appointed for the trial, and the time so appointed, if in vacation, was for such purpose to be deemed and taken to be part of the preceding term, see *R.* v. *Castro*, L. R. 9 Q. B. 350; 43 L. J., Q. B. 105; but now by s. 26 of the Judicature Act of 1873, subject to Rules of Court, the High Court of Justice and the Court of Appeal, and the Judges thereof respectively, or any Commissioners to whom any jurisdiction may be assigned under the Act, have power to sit and act, at any time and at any place, for the transaction of any part of the business of such Courts respectively, or of such Judges or Commissioners, or for the discharge of any duty which by any Act of Parliament or otherwise is required to be discharged during or after term.

NEW TRIAL.

Application for new trial.

166. Applications for a new trial, or to enter judgment non obstante veredicto, or to arrest judgment where such applications may by law be made, shall be by motion for an order nisi. Such motion shall be made to a Divisional Court of the Queen's Bench Division, and in cases tried in London or Middlesex within eight days after the trial, or on the first subsequent day on which a Divisional Court shall sit to hear motions on the Crown side, or if the trial has been had at the assizes, within the first seven days after the

last day of the sittings on the circuits for England and Wales; the time of the vacations shall not be reckoned in the computation of time for moving. Pr. 166–169.

The time for moving for a new trial under this rule is taken from Order XXXIX., Rule 4.

The mode of application by order *nisi* will only apply to indictments and *ex officio* and criminal informations. In *quo warranto*, *mandamus* and prohibition, the procedure is the same as in an action, and a new trial will be applied for on notice of motion. Appeals from inferior Courts are not included in these rules.

After acquittal upon indictments and informations in criminal cases properly so called, *R.* v. *Russell*, 23 L. J., M. C. 173, as a general principle, a new trial cannot be had, except where the substance is entirely civil, unless the acquittal was obtained by covin or laches, such as the defendant not having given due or sufficient notice of trial. It cannot be had in any case where the defendant would be liable to corporal punishment, as upon an indictment for obstruction to a highway: *R.* v. *Johnson*, 2 El. & El. 613; *R.* v. *Duncan*, 7 Q. B. D. 198, 50 L. J., M. C. 95, 44 L. T. 521. Even upon an indictment for non-repair of a highway, it has been said, the Court will not grant a new trial for misdirection, but may suspend the judgment in order that a new indictment may be preferred: see *R.* v. *Inhabitants of Wandsworth*, 1 B. & Ald. 63; *R.* v. *Sutton*, 5 B. & Ad. 52: but see *R.* v. *Russell*, *supra*.

In treason or felony there can be no new trial: *R.* v. *Mawbey*, 6 T. R. 638; 1 Burr. 394; *A.-G.* v. *Bertrand*, L. R. 1 P. C. 520; *R.* v. *Murphy*, L. R. 2 P. C. 535; 38 L. J., P. C. 53.

It has been held that there can be no motion in arrest of judgment after sentence pronounced at the assizes under 11 Geo. 4 & 1 Wm. 4, c. 70, s. 9: *Dunn* v. *Regem*, 12 Q. B. 1026; but it would seem that the Court may, under the same section, order the judgment to be arrested by amending it: *R.* v. *Nott*, 4 Q. B. 768. Motion in arrest of judgment.

167. The time in either case may be extended by the Court or a Judge. The grounds upon which the order was granted shall be stated in the order. Extending time and statement of grounds.

168. A copy of such order shall be served on the opposite party within four days from the time of the same being granted. Service of order *nisi*.

169. On moving for a new trial on indictment, information, or inquisition, all the defendants, if more than one, Presence of defendants on motion

Rr. 169–171.

for new trial.

who are not either in custody or who are only liable to a fine must be present in Court, unless the Court shall otherwise order.

This Rule affirms the existing practice: see *R.* v. *Teal*, 11 East, 307; *R.* v. *Askew and Others*, 3 M. & S. 9; *R.* v. *Caudwell*, 17 Q. B. 503; but of course does not apply to such defendants who may not join in the motion. As to the exception where defendant is only liable to a fine, see *R.* v. *Parkinson*, 15 Jur., O. S. 1011; 2 Den. C. C. 459; and as to when he is in custody on the charge, *R.* v. *Boltz*, 8 D. & R. 65, and *R.* v. *Hollingberry*, 4 B. & C. 329, 6 D. & R. 344.

JUDGMENT BY DEFAULT.

Entry of.

170. In case no plea, replication, rejoinder, joinder in demurrer, or other pleading (except joinder in error by the prosecutor) shall be entered within the time limited, judgment as for want of such pleading may be entered at the opening of the office on the next following morning after the expiration of the time limited, upon filing an affidavit of service of the order to plead reply, &c., as the case may be, unless an order of the Court or a Judge extending such time shall have been obtained and served, in which case judgment shall not be signed until the day after the expiration of the time granted by such order.

This Rule affirms the existing practice.

JUDGMENT.

Note of proceedings and certificate of result.

171. Upon every trial, whether at the assizes or at the sittings in London or Middlesex, the associate, clerk of assize, or master shall enter in a book to be kept for that purpose,—1st, the verdict of the jury and all such findings of fact, if any, as the Judge may direct to be entered; 2nd, the directions, if any, of the Judge as to judgment; 3rd, the certificates, if any, granted by the Judge; and the sentence of the Judge if then passed. A certificate, signed

by the associate, of such verdict, finding, or direction, judgment, or sentence shall be filed at the Crown Office by the associate, and judgment upon the postea may be entered at the Crown Office at any time after the expiration of the time limited for applying for a new trial, or for entering judgment non obstante veredicto, or arresting judgment unless otherwise ordered. Rr. 171–173.

The provisions of this Rule as to the entries to be made by the officer at the trial, and for the transmission of the certificate are new. The provision for entering the judgment upon the return of the *postea* is according to the existing practice.

For Form of Certificate see No. 103, App., p. 209.

172. On all trials for felonies or misdemeanors in the Queen's Bench Division, except upon informations filed by leave of the Court, and ex-officio informations where the Attorney-General shall pray that the judgment may be postponed, judgment may be pronounced during the sittings or assizes at which the trial has taken place by the Judge before whom the verdict has been taken, as well upon the defendant who shall have suffered judgment by default or confession as upon those who shall have been tried and convicted, and whether such persons be present or not in Court. Power to pass sentence at time of trial.

This Rule embodies the provisions of the statute 11 Geo. 4 and 1 Wm. 4, c. 70, s. 9.

173. The Judge before whom the trial shall be had may either issue an immediate order or warrant, for committing the defendant in execution, or respite the execution of the judgment on such terms, as he shall think fit, and for such time as may be necessary, for the purpose of enabling the defendant to move for a new trial, or in arrest of judgment, and if imprisonment be part of the sentence, may order the period of imprisonment to commence on the day on which the party shall be actually taken to and confined in prison. Judge at trial may commit in execution or respite execution.

Form of Warrant if Defendant not present, No. 106, App., p. 211.

Form of Committal in Execution, No. 108, p. 211.

Rr. 174–176.

Warrant where defendant convicted but not sentenced.

174. If a defendant be convicted and not sentenced at the trial, and is not under recognizance or under sufficient recognizance to appear to receive the sentence of the Court, or if it be made to appear on affidavit or otherwise that he is likely to abscond, a Judge's warrant may be obtained at any time after verdict and before final judgment, and either from the Judge at the trial or from a Judge at Chambers, to hold him to bail, or to require him to give such further bail as the Judge in his discretion may think fit, upon a certificate, if he be not under recognizance, of the conviction to be obtained from the clerk of assize or associate; and a certificate of his not being under recognizance from the Crown Office, or if he be under recognizance, upon a certificate of conviction and an affidavit of facts showing the necessity of further bail.

For Form of Recognizance, see No. 121, App., p. 217.

For Form of Warrant, see No. 107, App., p. 211; see also Form 110.

For Form of Certificate of Clerk of Assize or Associate, see No. 109, p. 212.

Postea and judgment thereon.

175. The postea may be obtained by the party in whose favour the verdict was found from the associate clerk of assize or master on the day after the last day on which a motion may be made for a new trial, or in arrest of judgment, or for judgment non obstante veredicto, unless there be an order nisi granted, and if an order nisi has been granted at any time after such order nisi shall have been discharged, and shall be produced at the Crown Office where the judgment will be entered in a book and signed on the record, according to the verdict, by the Queen's coroner and attorney, or the Master of the Crown Office.

Forms of *Postea*, Nos. 104 and 105, App., p. 210.

Compelling appearance of defendant for sentence.

176. If judgment on the postea is for the Crown or the prosecutor, and the defendant is not under recognizance to appear to receive sentence, he may be served with a four days' notice to appear on a certain day to receive the

sentence of the Court, or the prosecutor may issue a writ of capias ad satisfaciendum to take the defendant, to remain in custody without bail or mainprize until he satisfies the judgment or obtains his discharge upon writ of error.

See *R.* v. *Wilkes*, 4 Burr. 2541; *R.* v. *Waddington*, 1 East, 159.

From the nature of the cases tried in the Queen's Bench Division, it very seldom happens that it is necessary to issue the writ of *capias*.

The Form of Notice, No. 122, App., p. 217, may be used, omitting the last paragraph.

Form of *Ca. sa.*, No. 145, App., p. 228.

Notice to appear for sentence when defendant under recognizance.

177. If the defendant be not in custody and be under recognizance to appear to receive sentence, the defendant and his bail may be served with a four days' notice, that on a day named therein, the Court will be moved for judgment. Such service need not be personal.

Form of Notice, No. 122, App., p. 217.

The *postea* or entry roll to be in Court on passing sentence.

178. The postea, or if interlocutory judgment be upon confession, default, or retraxit, the entry roll, shall be in Court on moving for final judgment, and if the defendant does not answer on being called three times, the prosecutor on an affidavit of service of notice may move under Rule 126 to estreat the recognizance, and upon the estreat of the recognizance a Judge may grant a bench warrant for the apprehension of the defendant; or the prosecutor may issue a capias and proceed to outlawry.

For Form of Affidavit of Service, see No. 199, App., p. 248.

Form of Warrant, No. 110, App., p. 212.

Form of *Capias*, No. 144, App., p. 228.

Respite of judgment pending application for writ of error.

179. The Court on giving final judgment or the Court of Appeal on affirmance may, if they shall so think fit, on the application of the defendant then present, respite the execution of the judgment for such time as may be necessary for the defendant to obtain the Attorney-General's fiat for a writ of error, or consent for an appeal to the House of Lords upon the defendant entering into a recognizance with two sufficient sureties, upon such terms as the Court may order, to render himself into custody or to prosecute his

Rr. 179–182.

writ of error or appeal with effect, and may order the period of imprisonment, if that be part of the sentence, to commence on the day on which the party shall be actually taken to and confined in prison.

This Rule is new, and is an extension of the provisions of 8 & 9 Vict. c. 68, s. 1, and formulates that which has been done by the Court, in some few instances upon its own authority, in order to prevent a defendant being imprisoned between the pronouncing of sentence and obtaining a writ of error. See *post*, Rules, 199, 200.

For Form of Recognizance, see No. 127, App., p. 220.

As a general rule the Court, although they have the power to do so, will not pass sentence of corporal punishment in the absence of a defendant (*R.* v. *Chichester*, 17 Q. B. 504, n.; 15 Jur. 1131; *R.* v. *Hann and Another*, 3 Burr. 1787; *R.* v. *Williams*, Easter Term, 1870, and many other cases unreported); but where the punishment is by fine only, the Court sometimes dispenses with the personal appearance of the defendant upon motion for that purpose, founded upon affidavits stating the grounds, such as great personal inconvenience, infirmity, or expense, and it must be upon the solicitor's undertaking to pay any fine that may be imposed.

Procedure on passing sentence.

180. When any defendant shall, after verdict, be brought up for sentence on any indictment or information, after the notes of the trial shall have been read, the affidavits produced on the part of the defendant, if any, shall be read, and then any affidavits produced on the part of the prosecution, after which the counsel for the defendant shall be heard, and lastly, the counsel for the prosecution.

This Rule affirms the existing practice, and is taken from a Reg. Gen. of Mich. Term, 29 Geo. 3: see *R.* v. *Buntz and Others*, 2 T. R. 683, and *R.* v. *Dignam*, 7 A. & E. 593.

Where judgment by default or confession.

181. When any defendant shall be brought up for sentence after judgment, by default, confession, or retraxit, the prosecutor's affidavits shall be first read, then the defendant's affidavits, after which the counsel for the prosecution shall be heard, and lastly the counsel for the defendant.

See the cases referred to in the last preceding Rule.

Where no affidavits produced.

182. If no affidavits are produced the counsel for the defendant shall be first heard and then the counsel for the prosecutor.

ERROR.

183. Error upon a judgment shall lie to the Queen's Bench Division. Error, to what Court.

Under this Rule error lies from the Courts of Assize, Central Criminal Court, and also from all inferior courts of Record having criminal jurisdiction, to the Queen's Bench Division.

Although the Courts of Assize and Central Criminal Court are, by virtue of ss. 16 and 29 of the Judicature Act, 1873, constituted Courts of the High Court, yet by s. 19 of the Act of 1875 (*post*, p. 292), the practice and procedure in all criminal matters remains unaltered, and no change is effected by this Rule.

The writ of error issues from the Common Law side of the Chancery Division or Petty Bag, and lies from all Courts of inferior criminal jurisdiction returnable in the Queen's Bench Division.

For Form of Writ see No. 126, App., p. 219.

184. No writ of error shall lie without the fiat of the Attorney-General having been first obtained. Fiat for writ.

The fiat of the Attorney-General is a condition precedent to the issuing of the writ: *Castro* v. *Murray*, L. R. 10 Ex. 213; 44 L. J., M. C. 72; 32 L. T. 675; and although he may in his discretion withhold his fiat, it is usually (though not in every case) granted on the certificate of counsel that there is error upon the record, and an affidavit of the error in fact, if there be any: *R.* v. *Wilkes*, 4 Burr. 2550. The Court will not interfere with his discretion when he has granted the writ: *R.* v. *Clark*, 7 W. R. 601, Q. B. Nor has the Court (*R.* v. *Newton*, 24 L. J., Q. B. 246; *S. C.*, 4 E. & B. 869), or the Lord Chancellor (*Pigott, In re*, 19 L. T. 114, Ir. Ch.; 11 Cox, C. C., 311), any power to do so when he has refused it. But when the writ has been obtained merely for the purpose of a compromise the Court will quash it: *Alleyne* v. *R.*, 5 E. & B. 399; 24 L. J., Q. B. 282.

For Form of Fiat see No. 125, App., p. 218.

185. The writ of error upon judgment given in inferior courts, with the return thereto, shall be filed at the Crown Office. Return to the writ.

The return is made by annexing the engrossment of the record of the judgment (the original need not be returned), and by indorsing the writ of error as follows:—

[*Signature and Seal of one of the Justices.*] { The answer of A. B., one of the Justices within mentioned. } L. S.

Rr. 186–190.

Application of Rule 179.

186. Rule 179 shall apply to all judgments upon writs of error.

Assignment of errors.

187. The plaintiff in error shall assign errors in person or by his solicitor, and if in person and in custody shall be brought up into Court for that purpose upon a writ of habeas corpus.

This Rule imports a somewhat important change into the practice. Hitherto the plaintiff in error in cases of felony could only assign errors in person (see *Mansell* v. *R.*, 8 E. & B. 54; *S. C.*, in Ex. Ch. 27 L. J., M. C. 4, where the former proceedings upon error to the Queen's Bench, and also to the Court of Exchequer Chamber are very fully set out), except under very exceptional circumstances: see *Murray* v. *R.*, 7 Q. B. 700, 3 D. & L. 100. Under this Rule he is enabled to do so by solicitor.

For Form of Assignment see No. 129, App., p. 221.

If it is required to bring the plaintiff in error into Court upon a writ of *habeas corpus*, an order must be drawn up for the writ to issue upon an affidavit (Form No. 128, App., p. 220). Such order may be drawn up as of course without any motion in Court: see Rule 252, *post*, p. 114.

Form of *Habeas Corpus*, No. 176, App., p. 239.

Assignment of errors by plaintiff in error not in custody.

188. If the plaintiff in error assigns errors by his solicitor or in person and is not in custody, he may do so by delivering the assignment of errors in writing to be filed at the Crown Office.

The provisions of this Rule are new so far as they apply to felony.

Assignment of errors in person when in custody.

189. If the plaintiff in error assigns errors in person and is in custody he shall be brought into Court, and assign errors, and move that counsel may be assigned to him, and shall then deliver to the officer of the Court in writing the assignment of errors to be filed at the Crown Office.

See note to next Rule.

Commitment of plaintiff in error in custody.

190. Upon delivery of the assignment of errors under the last preceding Rule, an Order of Court shall be drawn up to commit the plaintiff in error to the Queen's prison, until the decision of the Court upon the writ.

For form of order of committal, and for assigning counsel under preceding Rule, see *Mansell* v. *R.*, *supra*.

191. In misdemeanor the plaintiff in error need not assign errors in person, or have counsel assigned to him, or if in custody, be present at the hearing of the case or when judgment is given, unless the Court shall otherwise order. Assignment of errors in misdemeanor.

Compare Rule 187, *ante*, and see notes to that Rule.

Should the defendant have been admitted to bail under Rule 199, he must be in Court when judgment is given, pursuant to the provisions of the recognizance : see Form of it, No. 127, App., p. 220. So also if he prays for judgment for want of a joinder in error, see Rules 193, 194, 202.

192. An order for the Attorney-General or Queen's Coroner and Attorney to join in error within eight days after service may be drawn up at the Crown Office and be served, with a copy of the assignment of errors on the prosecutor or his solicitor. Order to join in error.

See also Rule 252, *post*, p. 114.

For Form of Joinder in Error, see No. 130, App., p. 221.

193. If no joinder be filed within eight days, the plaintiff in error being personally present in Court, upon a certificate of notice having been given to the Attorney or Solicitor-General, signed by him, or on his behalf, of such intended application, may move the Court for an order nisi for judgment ; and upon an affidavit of service of the order nisi upon the officer of the Court from whence error is brought, the Court may examine the record and give judgment of reversal, or such judgment as the Court from which error is brought ought to have done. Judgment for want of a joinder in error.

See next Rule, and note to Rule 202, *post ;* and also *Howard* v. *R.*, 11 L. T. 629 ; 10 Cox, C. C. 54.

194. If no joinder be filed within eight days, and the plaintiff in error be in custody, he may be brought into Court by order if he be in the Queen's prison, or by habeas corpus if elsewhere, and the plaintiff in error, or his counsel may then move on an affidavit of service of the order to join in error, and that on search made at the Crown Office that it appears there is no joinder filed, for judgment for the plaintiff in error, and for the prisoner's discharge. Judgment for want of a joinder in error, when plaintiff in error is in custody.

See preceding Rule, and note to Rule 202, *post*, p. 82.

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Joinder in error.

195. Joinder in error shall be filed at the Crown Office by the prosecutor, and a copy served on the plaintiff in error or his solicitor.

For Form of Joinder, see No. 130, App., p. 221.

Entry of case for argument.

196. At any time after filing of the joinder in error the case may be put into the Crown paper for argument upon the application of either party.

Hitherto it has been necessary to obtain a Rule for a *concilium*.

Paper books.

197. Two paper books for the use of the Judges shall be delivered by the plaintiff in error at the Crown Office two days before the day appointed for hearing.

These paper books should contain—

(*a*) A copy of the writ of error;
(*b*) A copy of the record;
(*c*) A copy of the assignment in error;
(*d*) A copy of the joinder in error.

See also Rules 144, 146, *ante*, p. 64.

Judgment.

198. On judgment being given, an order, either for remanding the prisoners to undergo the remainder of their sentence, or for their discharge, shall be drawn up and lodged with the gaoler by the prosecutor.

See form of order in *Mansell* v. *R.*, 8 E. & B. 54, 27 L. J., M. C. 4.

By 11 & 12 Vict. c. 78, s. 5, the Court of Error upon reversing judgment, may either pronounce the proper judgment or remit the record, in order that the Court from whence it came may pronounce the proper judgment.

For Forms of Judgments see Nos. 131, 132, 133, App., pp. 221, 222.

Bail in error.

199. Where a writ of error has been brought by the defendant and not by the Attorney-General, the defendant on the indictment on obtaining his writ of error, or consent for an appeal to the House of Lords shall have the execution of the judgment stayed, and receive back the amount of any fine levied upon him upon the judgment, and further if in custody shall be entitled to be discharged from imprisonment on entering into a recognizance with two sufficient sureties to prosecute the writ of error in the Form (No. 127) before a Judge of the High Court, or justice of the peace of the county, borough, or place where the defendant may be in custody. The bail to be justified in the usual manner,

on twenty-four hours' notice to the prosecutor, or on such other notice as the Judge, or justice of the peace, may order. Provided that in the case of any defendant under legal disability, it shall be sufficient if two persons to be appointed to be approved of by such Judge or justice shall become bound by such recognizance on behalf of such defendant.

Rr. 199–2 0

Defendant under legal disability.

This Rule embodies the provisions of 8 & 9 Vict. c. 68, s. 1, substituting, for the purposes of taking the bail, justices of the peace instead of the commissioners for taking special bail mentioned in the Act.

200. Every such recognizance shall be filed at the Crown Office, and the Queen's Coroner and Attorney, or the Master of the Crown Office, shall make out and deliver a certificate sealed with the seal of the office that such recognizance is duly filed of record, which certificate shall be a sufficient warrant to the gaoler having the custody of the plaintiff in error, to discharge him out of custody, and for the repayment of any fine which may have been imposed by the Court by the person having in his possession the whole or any part of the fine levied in execution of such judgment. Provided that no person who shall have received any such money and have paid it over to any other person according to the course of the Exchequer shall be liable to repay to the defendant any part of the money so paid over.

Filing recognizance and effect of it.

The provision for filing the recognizance is taken from the section referred to in the note to the last preceding Rule; the remainder of the Rule embodies the provisions of 8 & 9 Vict. c. 68, s. 2, as amended by 9 & 10 Vict. c. 24, s. 4.

201. If the plaintiff in error shall make default in prosecuting the writ of error with effect or in any other way break the conditions of his recognizance, the Court may estreat the recognizance in a summary way without issuing a writ of scire facias, and order the writ of error to be quashed without any argument thereon, and in every such case the plaintiff in error shall forthwith be liable to execution upon the judgment.

Default by plaintiff in error.

This Rule embodies the provisions of 8 & 9 Vict. c. 68, s. 5, and 16 & 17 Vict. c. 32, s. 2.

Rr. 202–204.

Judgment for want of a joinder in error not to be given without order of the Court.

202. Whenever any writ of error shall be brought for the reversal of any judgment in misdemeanor and error shall be assigned thereon, no judgment of reversal shall be entered either for want of a joinder, or otherwise, without the order of the Court in which such writ of error shall be pending, pronounced in open Court; and upon a certificate, signed by or on behalf of the Attorney or Solicitor-General, that notice has been given to one of them of such intended application, and if there be no joinder in error such Court may proceed to examine the record in error, and give such judgment thereon as the Court from which error is brought ought to have done, although no joinder in error may have been filed.

The provisions of this Rule are taken from 16 & 17 Vict. c. 32, s. 3 : see *ante*, Rules 193 and 194.

Payment and recovery of a fine received back not to prevent imprisonment till fine again paid.

203. Whenever the judgment against a plaintiff in error shall have been for the payment of a fine, and imprisonment until such fine be paid, either with or without imprisonment for a certain time, and the plaintiff in error shall have paid the fine, or the same or any part thereof shall have been levied and shall have been received back under the provisions of Rules 199 and 200, and the judgment upon writ of error brought shall be affirmed, the plaintiff in error shall not be entitled, by reason of such payment as aforesaid, to be discharged from imprisonment, notwithstanding the expiration of any certain time of imprisonment for which the original judgment shall have been given until the fine shall be again paid.

Taken from 8 & 9 Vict. c. 68, s. 4.

Warrant of arrest when judgment affirmed or plaintiff in error has made default.

204. When a recognizance on bail in error shall have been estreated, or judgment been affirmed, or writ of error been quashed, on an affidavit or a certificate of the proper officer of the Court to any such effect, and that default has been made for the space of four days in rendering the plaintiff in error to prison, a Judge at Chambers may issue his warrant to cause the defendant to be apprehended and im-

prisoned pursuant to and in execution of the judgment on an ex parte application by the prosecutor.

Taken from 16 & 17 Vict. c. 32, s. 5.

Time of imprisonment, how reckoned.

205. Whenever a plaintiff in error shall be committed by the Court in execution of the judgment given against such plaintiff in error, and whenever a plaintiff in error shall, by virtue of any warrant or in other manner, be rendered to prison in execution of such judgment, the imprisonment (if imprisonment shall not have commenced under such execution) shall be reckoned to begin from the day when such plaintiff in error shall be in actual custody in the prison in which he may have been adjudged to be imprisoned under such judgment; and if the plaintiff in error shall have been discharged from imprisonment on giving bail in error, as is in these Rules before mentioned, such plaintiff in error shall be imprisoned for such further period in the same prison as with the time during which such plaintiff in error may already have been imprisoned under such execution shall be equal to the period for which he was adjudged to be imprisoned as aforesaid.

Taken from 8 & 9 Vict. c. 68, s. 3, and 16 & 17 Vict. c. 32, s. 6.

Plaintiff in error to pay costs of render to prison if he fails to render himself.

206. Whenever default shall have been made in rendering a plaintiff in error to prison in execution of a judgment for misdemeanor, and a warrant shall have been issued against such plaintiff in error to enforce such render to prison, according to the provisions of these Rules, such plaintiff in error shall be liable to pay the costs and charges of such render; and if the prosecutor shall, before the expiration of the plaintiff in error's imprisonment, have caused the amount of such costs and charges to be ascertained by one of the masters at the Crown Office, and shall have left with the said plaintiff in error, and with the keeper of the prison or his deputy, a certificate under the hand of such master, of the amount of such costs so ascertained, then the said plaintiff in error shall not be discharged out of custody until such costs and charges shall have been paid, or until

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an order for such discharge has been made by a Court exercising bankruptcy jurisdiction.

Taken from 16 & 17 Vict. c. 32, s. 7.

ERROR UPON JUDGMENTS IN THE QUEEN'S BENCH DIVISION.

Error from the Queen's Bench Division.

207. Every writ of error from a judgment of the Queen's Bench Division of the High Court, shall be made returnable before the Court of Appeal, and served by delivery at the Crown Office.

The jurisdiction and powers of the Court of Exchequer Chamber were transferred to the Court of Appeal by s. 18 of the Judicature Act, 1873, and s. 19 confers upon the Court of Appeal jurisdiction to "hear and determine appeals from any *judgment or order*, save as hereinafter mentioned, of Her Majesty's High Court of Justice, or of any Judges or Judge thereof, subject to the provisions of this Act and to such Rules and Orders for regulating the terms and conditions in which such appeals shall be allowed, as may be made pursuant to this Act." Sect. 47 of the same Act, after providing for the continuance of the Court for Crown Cases Reserved, further provides that "no appeal shall lie from any judgment of the High Court in any criminal cause or matter save for some error of law, apparent upon the record, as to which no question shall have been reserved" for the consideration of the Judges of the Court of Crown Cases Reserved. Sect. 19 of the Act of 1875, *post*, p. 292, provides that, subject to Rules of Court, the practice in all criminal proceedings in the High Court and Court of Appeal respectively, shall remain unaltered, and Rule 2, *ante*, p. 1, provides that where no other provision is made by these Rules the present procedure and practice are to remain in force.

The effect of these two sections is to draw a distinction between civil and criminal proceedings on the Crown side, and to prevent any appeal to the Court of Appeal in criminal matters save for some error on the record; in which case error is to be brought as heretofore by writ of error, for examples see *Aspinall and Others* v. *R.*, 2 Q. B. D. 48; *Bradlaugh* v. *R.*, 3 Q. B. D. 607, and *Castro* v. *R.*, 5 Q. B. D. 490, C. A. The proceedings thereon are regulated by this and the following Rules.

As to civil proceedings, see Rule 216, *post*, p. 86.

Error to the House of Lords is abolished by the Appellate Jurisdiction Act, 1876, ss. 4 and 11, *post*, p. 293, and appeal by petition substituted therefor.

Entry of proceedings on roll.

208. Upon delivery of the writ of error the prosecutor shall enter the proceedings up to judgment on the roll, and

carry it into the Crown Office, and if the prosecutor does not, within a reasonable time, carry in the roll, the plaintiff in error may obtain a Judge's order upon a summons to compel him to do so. Rr. 208 214.

For Form of Roll, see No. 112, App., p. 213.

209. When the roll has been carried in, the plaintiff in error, on application to the Queen's Coroner and Attorney or the Master of the Crown Office, may obtain a memorandum or certificate of the allowance of the writ of error, for service upon the defendant in error or his solicitor. Memorandum of allowance of writ of error.

For Form, see Nos. 136 and 137, App., p. 224.

210. The plaintiff in error, within twenty days after the allowance of the writ of error, shall make a transcript of the record on parchment, and lodge it at the Crown Office, and if the record be not transcribed within such time the defendant in error may move the Court of Appeal for leave to sign judgment of non prosequitur at the Crown Office. Transcript of the record.

Taken from the Rules of Hilary Term, 4 Will. 4, Rule 10: 5 B. & Ad. App. xv., and see *Mansell* v. *R.*, 8 E. & B. 54; 27 L. J. M. C. 4.

211. When the transcript has been lodged it shall be annexed to the writ of error, and (on a return made and signed by the Lord Chief Justice of England) delivered into the Court of Appeal by the proper officer at the Crown Office. Return to writ of error to Court of Appeal.

212. The plaintiff in error shall, within eight days after delivery of the record into the Court of Appeal, assign errors thereon. Assignment of errors.

The assignment may be in the same form as on error to the Q. B. D., No. 129, App., p. 221.

213. Upon filing of the joinder in error the case shall be put into the list of appeals for argument, upon application of either party. Entry of case for argument.

The joinder may be in the same form as on error to the Q. B. D., No. 130, App., p. 221.

214. The rules as to assigning errors and subsequent Application of

Rr. 214–216.

proceedings up to judgment in the Queen's Bench Division shall apply to the Court of Appeal.

rules to the Court of Appeal.

Court of Appeal may pronounce judgment or remit the record.

215. Upon the judgment of the Court of Appeal being pronounced in favour of the plaintiff in error, the Court may either pronounce the proper judgment and order his discharge if in custody, or remit the record to the Queen's Bench Division, to be dealt with according to law.

See *King and Another* v. *R.*, 14 L. J. M. C. 172.

APPEALS.

Application of O. LVIII.

216. Order LVIII. of the Rules of the Supreme Court, 1883 (Appeals), shall apply to all civil proceedings on the Crown side, including mandamus, prohibition and quo warranto.

In civil proceedings an appeal lies under s. 19 of the Judicature Act, 1873, from every *judgment or order* of the Queen's Bench Division, save as thereinafter in that Act mentioned, unless there be some express enactment prohibiting an appeal: Appellate Jurisdiction Act, 1876 (39 & 40 Vict. c. 59), s. 20; but in criminal proceedings on the Crown side, on the other hand, there is no appeal, save for some error upon the record. See note to Rule 207, *ante*, p. 84.

An appeal, therefore, does not lie against an order of the Queen's Bench Division discharging a rule to review a master's taxation of costs upon a criminal information, *R.* v. *Steel and Others*, 2 Q. B. D. 37; 46 L. J. M. C. 1; 35 L. T. 534, C. A.; nor for an order discharging a rule for a *certiorari* to remove a summary conviction, *R.* v. *Fletcher*, 2 Q. B. D. 43, C. A.; nor against the refusal of an order under 19 & 20 Vict. c. 26, s. 3, for the trial of a person at the Central Criminal Court, *R.* v. *Rudge and Others*, 16 Q. B. D. 459, C. A.; nor from an order quashing an order of justices under sect. 92 of the Public Health Act, 1875, to abate a nuisance, where a penalty is attachable for not obeying such order, *R.* v. *Whitchurch*, 7 Q. B. D. 534, C. A.; nor against a refusal to admit to bail, *R.* v. *Foote*, 10 Q. B. D. 378, C. A. *Quære*, whether it will lie against the refusal of a writ of *habeas corpus* in a criminal case: *R.* v. *Weil*, 9 Q. B. D. 701; 53 L. J. M. C. 74, C. A. But it was allowed upon a *habeas corpus* to bring up a prisoner in custody upon a writ of *contumace capiendo*, on the ground that a con-

tempt of Court is not a criminal matter, *Ex parte Dale and Enraght*, 50 L. J. Q. B. 276; 6 Q. B. D. 474; 43 L. T. 786, C. A.; but since then it has been held that an attachment for contempt when punitive is a criminal proceeding, *In re Freston*, 11 Q. B. D. 545, C. A.; *In re Dudley*, 12 Q. B. D. 44, C. A.; in those cases, notwithstanding that the matters were held to be criminal, the Court heard the appeals. R. 216.

The following matters have also been held to be criminal proceedings:—

A special case stated by justices upon a summons for not causing a child to attend school pursuant to the bye-laws of the School Board under the Elementary Education Act, 1873, s. 47, where the parent was liable to a penalty: *Mellor* v. *Denham*, 5 Q. B. D. 467; 49 L. J. M. C. 89, C. A.

An order of sessions subject to a case for the opinion of the Queen's Bench Division upon an appeal against a conviction under the Weights and Measures Act: *R.* v. *Baxendale*, 6 Q. B. D. 144, note.

As to the practice upon error, see *ante*, Rule 207, p. 84, and notes thereto.

The Queen's Bench Division, in the exercise of its original jurisdiction when removing proceedings from inferior tribunals by *certiorari* for the purpose of quashing, is not exercising an appellate jurisdiction within the meaning of s. 45 of the Judicature Act, 1873; and where there is an appeal no leave to appeal is required: see *R.* v. *Pemberton and Others*, 5 Q. B. D. 95, C. A. So where it quashes or affirms an order of sessions made upon an appeal, and whether subject to a case for the opinion of the Queen's Bench Division or not: see *R.* v. *Savin*, 6 Q. B. D. 309, C. A.; *Illingworth* v. *Bulmer East*, 53 L. J. M. C. 60; *Overseers of Wallsall* v. *London and North-Western Railway Company*, 4 App. Cases, 30; 48 L. J. M. C. 65; 39 L. T. 453; but it is otherwise if a case is stated under the Public Health Act, 1875, see *post*, p. 268.

An order made upon a case stated under Baines's Act (12 & 13 Vict. c. 45, s. 11), is an order within the meaning of s. 19 of the Judicature Act, 1873, *Corporation of Peterborough* v. *Overseers of Wilsthorpe*, 12 Q. B. D. 1; 53 L. J. M. C. 33, C. A.; and a case so stated is not an appeal from an inferior court within s. 45 so as to require leave to appeal: *Holborn Guardians* v. *Chertsey Guardians*, 15 Q. B. D. 76, C. A.

Mandamus, prohibition and *quo warranto* are, for the purposes of this Rule, to be included amongst civil proceedings; and it would seem that it makes no difference that the *mandamus* relates to a criminal proceeding: *R.* v. *Holl*, 7 Q. B. D. 575; 50 L. J. Q. B. 763, C. A.

Quo warranto has also been made a civil proceeding by the Judicature Act of 1884 (47 & 48 Vict. c. 61), s. 15, whether for the purposes of appeal or otherwise.

R. 216.

As to appeal in prohibition, see *Barton* v. *Titmarsh*, 49 L. J. Q. B. 573.

The Court of Appeal has no original jurisdiction except that which it derives from its appellate jurisdiction (*Allen* v. *United Kingdom Electric Telegraph Company*, 24 W. R. 898; *Re Dunraven Coal Company*, 24 W. R. 37; *Flower* v. *Lloyd*, 6 Ch. D. 297, C. A.); but the Court has released upon bail persons appealing against a refusal of the Queen's Bench Division to grant a writ of *habeas corpus* pending the appeal: *Re Dale and Enraght*, cor. Ld. Selborne, L.C., Baggallay and Brett, L.JJ., 18 Dec. 1880.

Order LVIII., by this Rule applied to civil proceedings on the Crown side, is subjoined.

O. LVIII. rr. 1–3.

ORDER LVIII.

Appeals to the Court of Appeal.

Appeal by motion a rehearing.

1. All appeals to the Court of Appeal shall be by way of rehearing, and shall be brought by notice of motion in a summary way, and no petition, case, or other formal proceeding other than such notice of motion shall be necessary. The appellant may by the notice of motion appeal from the whole or any part of any judgment or order, and the notice of motion shall state whether the whole or part only of such judgment or order is complained of, and in the latter case shall specify such part.

Parties to be served with notice of appeal.

2. The notice of appeal shall be served upon all parties directly affected by the appeal, and it shall not be necessary to serve parties not so affected; but the Court of Appeal may direct notice of the appeal to be served on all or any parties to the action or other proceeding, or upon any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may be just, and may give such judgment and make such order as might have been given or made if the persons served with such notice had been originally parties. Any notice of appeal may be amended at any time as the Court of Appeal may think fit.

Notice of appeal.

3. Notice of appeal from any judgment, whether final or interlocutory, or from a final order, shall be a fourteen days'

notice, and notice of appeal from any interlocutory order shall be a four days' notice. O. LVIII. rr. 3, 4.

It is by no means easy in many instances to determine whether an appeal should be treated as interlocutory or final. It rests with the appellant in the first instance to make his election, and when he enters the appeal for hearing he is required to mark on the notice of appeal "final" or "interlocutory." If a doubt arises it must be determined by the Court of Appeal: see Judicature Act, 1875, s. 12, *post*, p. 292. In determining, the form of the proceeding must be looked at: *White* v. *Witt*, 5 Ch. D. 589, C. A.; *Pheysey* v. *Pheysey*, 12 Ch. D. 305, C. A. One important test is, whether there is anything more to be done (not being mere matter of form) upon the judgment or order to complete it: see *Standard Company* v. *La Grange*, 3 C. P. D. 67, C. A.; *Corporation of Peterborough* v. *Overseers of Wilsthorpe and Others*, 32 W. R. 548.

An appeal against an order made upon a case stated under 12 & 13 Vict. c. 45, s. 11, has been held to be interlocutory: *Corporation of Peterborough* v. *Overseers of Wilsthorpe and Others*, *supra*. So also against an order for a new trial: *Highton* v. *Treherne*, 48 L. J. Ex. 167, C. A.

On the other hand where certain appeals against orders made upon orders of sessions subject to special cases were entered in the Interlocutory List, the Court of Appeal directed them to be transferred to the Final List, on the ground that the judgment of the Superior Court is absolutely final: *R.* v. *Overseers of Middlesborough* and *R.* v. *Overseers of Linthorpe*, 10 Nov. 1883.

4. The Court of Appeal shall have all the powers and duties as to amendment and otherwise of the High Court, together with full discretionary power to receive further evidence upon questions of fact, such evidence to be either by oral examination in Court, by affidavit, or by deposition taken before an examiner or commissioner. Such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought. Upon appeals from a judgment after trial or hearing of any cause or matter upon the merits, such further evidence (save as to matters subsequent as aforesaid) shall be admitted on special grounds only, and not without special leave of the Court. The Court of Appeal shall have power to draw inferences of fact and to give any judgment Powers of the Court of Appeal. Judgment.

O. LVIII. rr. 4–7.

and make any order which ought to have been made, and to make such further or other order as the case may require. The powers aforesaid may be exercised by the said Court, notwithstanding that the notice of appeal may be that part only of the decision may be reversed or varied, and such powers may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision.

Costs.

The Court of Appeal shall have power to make such order as to the whole or any part of the costs of the appeal as may be just.

The general rule as to costs is that they follow the event, unless the Court for special reasons otherwise orders: *Memorandum*, 1 Ch. D. 41; *Olivant* v. *Wright*, 45 L. J. Ch. D. 1, C. A.

Power to order new trial.

5. If upon hearing of an appeal, it shall appear to the Court of Appeal that a new trial ought to be had, it shall be lawful for the said Court of Appeal, if it shall think fit, to order that the verdict and judgment shall be set aside, and that a new trial shall be had.

Cross-appeals.

6. It shall not, under any circumstances, be necessary for a respondent to give notice of motion by way of cross-appeal, but if a respondent intends, upon the hearing of the appeal, to contend that the decision of the Court below should be varied, he shall within the time specified in the next Rule, or such time as may be prescribed by special order, give notice of such intention to any parties who may be affected by such contention. The omission to give such notice shall not diminish the powers conferred by the Act upon the Court of Appeal, but may, in the discretion of the Court, be ground for an adjournment of the appeal, or for a special order as to costs.

Length of notice of cross-appeal.

7. Subject to any special order which may be made, notice by a respondent under the last preceding Rule shall in the case of any appeal from a final judgment be an eight days' notice, and in the case of an appeal from an interlocutory order a two days' notice.

Entry of appeal.

8. The party appealing from a judgment or order shall produce to the proper officer of the Court of Appeal the judgment or order or an office copy thereof, and shall leave with him a copy of the notice of appeal to be filed, and such officer shall thereupon set down the appeal by entering the same in the proper list of appeals, and it shall come on to be heard according to its order in such list, unless the Court of Appeal or a Judge thereof shall otherwise direct, but so as not to come into the paper for hearing before the day named in the notice of appeal.

All appeals on the Crown side must be entered at the Crown Office.

Time for appealing in windi up and bank-ruptcy.

9. The time for appealing from any order or decision made or given in the matter of the winding up of a company under the provisions of the Companies Act, 1862, or any Act amending the same, or any order or decision made in the matter of any bankruptcy, or in any other matter not being an action, shall be the same as the time limited for appeal from an interlocutory order under Rule 15.

Appeal where *ex parte* application refused.

10. Where an *ex parte* application has been refused by the Court below, an application for a similar purpose may be made to the Court of Appeal *ex parte* within four days from the date of such refusal, or within such enlarged time as a Judge of the Court below or of the Court of Appeal may allow.

Evidence as to questions of fact.

11. When any question of fact is involved in an appeal, the evidence taken in the Court below bearing on such question shall, subject to any special order, be brought before the Court of Appeal as follows:

(*a.*) As to any evidence taken by affidavit, by the production of printed copies of such of the affidavits as have been printed, and office copies of such of them as have not been printed:

(*b.*) As to any evidence given orally, by the production of a copy of the Judge's notes, or such other materials as the Court may deem expedient.

O. LVIII. rr. 12–15.

Printing of evidence.

12. Where evidence has not been printed in the Court below, the Court below or a Judge thereof, or the Court of Appeal or a Judge thereof, may order the whole or any part thereof to be printed for the purpose of the appeal. Any party printing evidence for the purpose of an appeal without such order shall bear the costs thereof, unless the Court of Appeal or a Judge thereof shall otherwise order.

Evidence as to direction of a Judge.

13. If, upon the hearing of an appeal, a question arise as to the ruling or direction of the Judge to a jury or assessors, the Court shall have regard to verified notes or other evidence, and to such other materials as the Court may deem expedient.

Interlocutory order not appealed from.

14. No interlocutory order or rule from which there has been no appeal shall operate so as to bar or prejudice the Court of Appeal from giving such decision upon the appeal as may be just.

Time in which to appeal.

15. No appeal to the Court of Appeal from any interlocutory order, or from any order, whether final or interlocutory, in any matter not being an action, shall, except by special leave of the Court of Appeal, be brought after the expiration of twenty-one days, and no other appeal shall, except by such leave, be brought after the expiration of one year. The said respective periods shall be calculated, in the case of an appeal from an order in Chambers, from the time when such order was pronounced, or when the appellant first had notice thereof, and in all other cases, from the time at which the judgment or order is signed, entered, or otherwise perfected, or, in the case of the refusal of an application, from the date of such refusal. Such deposit or other security for the costs to be occasioned by any appeal shall be made or given as may be directed under special circumstances by the Court of Appeal.

It would seem that, under the wording of this Rule, no appeal can be brought against any proceeding on the Crown side after the expiration of twenty-one days, unless it be on a *mandamus* or prohibition after writ issued, as no other proceeding comes within the

definition of the word action, that word being interpreted as "a civil proceeding commenced by writ, or in such other manner as may be prescribed by Rules of Court; and shall not include a criminal proceeding by the Crown," Judicature Act, 1873, s. 100: see Order I., Rule 1, and *Attorney-General* v. *Shrewsbury Bridge Company*, 42 L. T. 79.

An appeal is "brought" when the notice of appeal is served, and not when it is entered: *Christopher* v. *Croll*, 16 Q. B. D. 66; 55 L. J. Q. B. 78; 53 L. T. 655, C. A.

On the Crown side the time runs from the day on which the judgment or order was pronounced: *Lightbound* v. *Higher Bebington Local Board*, 6 May, 1885, *per* Brett, M.R., Baggallay and Bowen, L.JJ. See also Rule 4, *ante*, p. 2.

As to the principle on which the Court grants extension of time for appeal, see *In re Manchester Economical Building Society*, 24 Ch. D. 488, C. A.

Against order on further consideration.

15A. The time for appealing against an order made on the further consideration of a cause, and on the hearing of a summons to vary the certificate on which such order is made, shall be the same as the time for appealing against the order on further consideration.

Appeal not a stay.

16. An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from, except so far as the Court appealed from, or any Judge thereof, or the Court of Appeal, may order; and no intermediate act or proceeding shall be invalidated, except so far as the Court appealed from may direct.

When application may be made to either Court.

17. Wherever under these Rules an application may be made either to the Court below or to the Court of Appeal, or to a Judge of the Court below or of the Court of Appeal, it shall be made in the first instance to the Court or Judge below.

Applications to a Judge to be by motion.

18. Every application to a Judge of the Court of Appeal shall be by motion, and the provisions of Order LII. shall apply thereto.

Interest when execution stayed.

19. On an appeal from the High Court, interest for such time as execution has been delayed by the appeal shall be allowed unless the Court or a Judge otherwise orders, and the taxing officer may compute such interest without any order for that purpose.

Rr. 217–220.

EXECUTION.

Here, as in several other instances, two sets of Rules are provided, the one applying to criminal the other to civil proceedings; but in proceeding to execution it will rarely be found necessary to draw a very strict distinction, as the Rules applied to criminal proceedings are substantially counterparts of those applied to civil proceedings, and in themselves would generally be sufficient for all purposes on the Crown side.

Application of Order XLII.

217. Order XLII. of the Rules of the Supreme Court, 1883 (Execution), shall, as far as it is applicable, apply to all civil proceedings on the Crown side.

The incorporated Order XLII. is subjoined after Rule 228, *post*, p. 97.

The following Rules shall apply to all criminal proceedings on the Crown side:—

Attachment or committal for non-obedience.

218. A judgment or order requiring any person to do any act other than the payment of money, or to abstain from doing anything, may be enforced by writ of attachment, or by committal.

This is the same as Order XLII., Rule 7, *post*, p. 98.

Præcipe for writ of execution.

219. No writ of execution shall be issued without the party issuing it, or his solicitor, filing a præcipe for that purpose. The præcipe shall contain the title of the proceeding and the date of the judgment or order on which it is founded, the names of the parties against whom the execution is to be issued, and shall be signed by or on behalf of the solicitor of the party issuing it, or by the party issuing if he do so in person.

This is taken from Order XLII., Rule 12, *post*, p. 99.

Indorsement of name and address of solicitor and agent, or party issuing writ.

220. Every writ of execution shall be endorsed with the name and place of abode, or office of business, of the solicitor actually suing out the same; and when the solicitor actually suing out the writ shall sue out the same as agent for another solicitor, the name and place of abode of such other solicitor shall be endorsed upon the writ, and in case

no solicitor shall be employed to issue the writ, then it shall be endorsed with a memorandum expressing that the same has been sued out by the party in person, mentioning the city, town, or parish, and also the name of the hamlet, street, and number of the house of such residence, if any such there be.

This is the same as Order XLII., Rule 13, *post*, p. 100. See also Rule 230, *post*, p. 105.

Return to writs.

221. Every writ of execution shall be made returnable immediately after the execution thereof.

Poundage and expenses of execution.

222. In every case of execution the party entitled to execution may levy the poundage, fees, and expenses of execution over and above the sum recovered.

This is the same as Ord. XLII., Rule 15, *post*, p. 100, and so far as criminal proceedings are concerned is new; but inasmuch as, under 1 & 2 Vict. c. 110, s. 18, every Rule of Court for the payment of money or costs might be enforced in the same manner as a judgment-debt, it has been the practice since the passing of the Common Law Procedure Act, 1852, s. 123, to indorse a direction to the sheriff to levy poundage on all writs of execution issued upon Rules of Court for the payment of costs. See further as to the right of the sheriff to poundage fees, *Nash* v. *Dickenson*, L. R. 2 C. P. 252; *Bissicks* v. *Bath Colliery Company*, 3 Ex. D. 174; *Ex parte Lithgow*, 10 Ch. D. 169.

Interest.

223. Every writ of execution for the recovery of money shall be endorsed with a direction to the sheriff or other officer or person to whom the writ is directed to levy the money really due and payable and sought to be recovered, with interest at the rate of 4*l.* per cent. per annum from the time (when the judgment was entered up) or from the date of the order.

This is taken from Order XLII., Rule 16, *post*, p. 100.

Fi. fa. or *elegit*.

224. Every person to whom any sum of money or any costs shall be payable under a judgment shall, immediately after the time when the judgment was duly entered, be entitled to sue out one or more writ or writs of fieri facias, or one or more writs of elegit to enforce payment thereof.

Rr. 224-228.

This is substantially the same as Order XLII., Rule 17, *post*, p. 101. For Forms of Writs, see App., *post*, p. 224 *et seq.*

As to costs of an inquisition under a writ of *elegit*, see *Mahon* v. *Miles*, 30 W. R. 123.

Orders of Court or a Judge, how enforced.

225. Every order of the Court or a Judge in any cause or matter may be enforced in the same manner as a judgment to that effect.

This is substantially the same as Order XLII., Rule 24, *post*, p. 103, and is new as regards Judges' orders. Hitherto such orders on the Crown side have not been enforceable without first making them rules of Court.

Renewal of writs of execution.

226. A writ of execution, if unexecuted, shall remain in force for one year only from its issue, unless renewed in the manner hereinafter provided; but such writ may, at any time before its expiration, by leave of the Court or a Judge, be renewed by the party issuing it, for one year from the date of such renewal, and so on from time to time during the continuance of the renewed writ either by being marked with a seal of the Court bearing the date of the day, month, and year of such renewal, or by such party giving a written notice of renewal to the sheriff, signed by the party or his solicitor, and bearing the like seal of the Court; and a writ of execution so renewed shall have effect and be entitled to priority according to the time of the original delivery thereof.

This is the same as Order XLII., Rule 20, *post*, p. 101, and is new so far as the Crown side is concerned, and is in substance taken from the Common Law Procedure Act, 1852, which however did not apply to the Crown side: see *R.* v. *Seale*, 5 E. & B. 1; 24 L. J. Q. B. 221.

Evidence of renewal.

227. The production of a writ of execution or the notice renewing the same, purporting to be marked with such seal as in the last preceding Rule mentioned, showing the same to have been renewed, shall be sufficient evidence of its having been so renewed.

This is the same as Order XLII., Rule 21, *post*, p. 102.

Effect of *fi. fa.* and *elegit*.

228. Writs of fieri facias and of elegit shall have the same force and effect as the like writs have heretofore had

except that a writ of elegit shall no longer extend to the goods of the debtor, and shall be executed in the same manner in which the like writs have heretofore been executed. R. 228.

This Rule is taken from Order XLIII., Rule 1, the exception as to the goods of the debtor being added thereto in consequence of s. 146 of the Bankruptcy Act, 1883.

It should be noted that with this exception the provisions of Order XLIII. have not been applied to the Crown side.

ORDER XLII.

O. XLII. rr. 1–4.

Execution.

1. Where any person is by any judgment or order directed to pay any money, or to deliver up or transfer any property real or personal to another, it shall not be necessary to make any demand thereof, but the person so directed shall be bound to obey such judgment or order upon being duly served with the same without demand. Judgment or order to be obeyed without demand on service.

2. Where any person who has obtained any judgment or order upon condition does not perform or comply with such condition, he shall be considered to have waived or abandoned such judgment or order so far as the same is beneficial to himself, and any other person interested in the matter may on breach or non-performance of the condition take either such proceedings as the judgment or order may in such case warrant, or such proceedings as might have been taken if no such judgment or order had been made, unless the Court or a Judge shall otherwise direct. Non-performance of condition.

As to when condition has been fulfilled, see Rule 9, *post*.

3. A judgment for the recovery by or payment to any person of money may be enforced by any of the modes by which a judgment or decree for the payment of money of any Court whose jurisdiction is transferred by the Principal Act might have been enforced at the time of the passing thereof. How judgment for recovery of money may be enforced.

4. A judgment for the payment of money into Court may Judgment for pay-

O. XLII. rr. 4–9.

be enforced by writ of sequestration, or in cases in which attachment is authorized by law by attachment.

ment into Court.

Recovery of land.

5. A judgment for the recovery or for the delivery of the possession of land may be enforced by writ of possession.

Recovery of other property.

6. A judgment for the recovery of any property other than land or money may be enforced:

(*a.*) By writ for delivery of the property;

(*b.*) By writ of attachment;

(*c.*) By writ of sequestration.

Attachment or committal for non-obedience.

7. A judgment requiring any person to do any act other than the payment of money, or to abstain from doing anything, may be enforced by writ of attachment, or by committal.

This Rule is also applied to criminal proceedings by Rule 218, *ante*, p. 94.

Meaning of term "writ of execution."

8. In these Rules the term "writ of execution" shall include writs of *fieri facias*, *capias*, *elegit*, sequestration, and attachment, and all subsequent writs that may issue for giving effect thereto. And the term "issuing execution against any party" shall mean the issuing of any such process against his person or property as under the preceding Rules of this Order shall be applicable to the case.

Judgment on performance of condition.

9. Where a judgment or order is to the effect that any party is entitled to any relief subject to or upon the fulfilment of any condition or contingency, the party so entitled may, upon the fulfilment of the condition or contingency, and demand made upon the party against whom he is entitled to relief, apply to the Court or a Judge for leave to issue execution against such party. And the Court or Judge may, if satisfied that the right to relief has arisen according to the terms of the judgment or order, order that execution issue accordingly, or may direct that any issue or question necessary for the determination of the rights of the parties be tried in any of the ways in which questions arising in an action may be tried.

See Rule 2, *supra*, as to non-fulfilment of condition.

O. XLII. rr. 10–12.

Judgment against a firm.

10. Where a judgment or order is against a firm, execution may issue:

(*a.*) Against any property of the partnership;

(*b.*) Against any person who has appeared in his own name under Order XII., Rule 15, or who has admitted on the pleadings that he is, or who has been adjudged to be, a partner;

(*c.*) Against any person who has been served, as a partner, with the writ of summons, and has failed to appear.

If the party who has obtained judgment or an order claims to be entitled to issue execution against any other person as being a member of the firm, he may apply to the Court or a Judge for leave so to do; and the Court or Judge may give such leave if the liability be not disputed; or if such liability be disputed, may order that the liability of such person be tried and determined in any manner in which any issue or question in an action may be tried and determined.

Production of judgment or order on issuing execution.

11. No writ of execution shall be issued without the production to the officer by whom the same should be issued of the judgment or order upon which the writ of execution is to issue, or an office copy thereof, showing the date of entry. And the officer shall be satisfied that the proper time has elapsed to entitle the creditor to execution.

Præcipe for writ of execution.

12. No writ of execution shall be issued without the party issuing it, or his solicitor, filing a *præcipe* for that purpose. The *præcipe* shall contain the title of the action, the reference to the record, the date of the judgment, and of the order, if any, directing the execution to be issued, the names of the parties against whom, or of the firm against whose goods, the execution is to be issued; and shall be signed by or on behalf of the solicitor of the party issuing it, or by the party issuing it, if he do so in person. The Forms in Appendix G. shall be used, with such variations as circumstances may require.

Also applied to criminal proceedings by Rule 219, *ante*, p. 94.

O. XLII. rr. 13–16.

Indorsement of name and address of solicitor, agent, or party issuing writ.

13. Every writ of execution shall be indorsed with the name and place of abode or office of business of the solicitor actually suing out the same, and when the solicitor actually suing out the writ shall sue out the same as agent for another solicitor, the name and place of abode of such other solicitor shall also be indorsed upon the writ; and in case no solicitor shall be employed to issue the writ, then it shall be indorsed with a memorandum expressing that the same has been sued out by the plaintiff or defendant in person, as the case may be, mentioning the city, town, or parish, and also the name of the hamlet, street, and number of the house of such plaintiff's or defendant's residence, if any such there be.

Applied to criminal proceedings by Rule 220, *ante*, p. 94.

Teste of writs of execution.

14. Every writ of execution shall bear date of the day on which it is issued. The Forms in Appendix H. shall be used, with such variations as circumstances may require.

The *teste* of writs on the Crown side is provided for by Rule 231, *post*, p. 106.

Poundage and expenses of execution.

15. In every case of execution the party entitled to execution may levy the poundage, fees, and expenses of execution, over and above the sum recovered.

Applied to criminal proceedings by Rule 222, *ante*, p. 95.

Interest.

16. Every writ of execution for the recovery of money shall be indorsed with a direction to the sheriff, or other officer or person to whom the writ is directed, to levy the money really due and payable and sought to be recovered under the judgment or order, stating the amount, and also to levy interest thereon, if sought to be recovered, at the rate of 4*l.* per cent. per annum from the time when the judgment or order was entered or made, provided that in cases where there is an agreement between the parties that more than 4*l.* per cent. interest shall be secured by the judgment or order, then the indorsement may be accordingly to levy the amount of interest so agreed.

Substantially applied to criminal proceedings by Rule 223, *ante*, p. 95.

Fi. fa. and elegit.

17. Every person to whom any sum of money or any costs shall be payable under a judgment or order shall, so soon as the money or costs shall be payable, be entitled to sue out one or more writ or writs of *fieri facias* or one or more writ or writs of *elegit* to enforce payment thereof, subject nevertheless as follows:

(*a.*) If the judgment or order is for payment within a period therein mentioned, no such writ as aforesaid shall be issued until after the expiration of such period:

(*b.*) The Court or a Judge may, at or after the time of giving judgment or making an order, stay execution until such time as they or he shall think fit.

This Rule, without the additions (*a*) and (*b*), is also applied to criminal proceedings: see Rule 224 and note thereto, *ante*, p. 95.

Separate writs for money and costs.

18. Upon any judgment or order for the recovery or payment of a sum of money and costs, there may be, at the election of the party entitled thereto, either one writ or separate writs of execution for the recovery of the sum and for the recovery of the costs, but a second writ shall only be for costs and shall be issued not less than eight days after the first writ.

Time for issuing execution in cases not within Rule 17.

19. A party who has obtained judgment or an order, not being a judgment for payment of money or costs, or for the recovery of land, may issue execution in fourteen days, unless the Court or a Judge shall order execution to issue at an earlier or later date with or without terms.

Renewal of writs of execution.

20. A writ of execution if unexecuted shall remain in force for one year only from its issue, unless renewed in the manner hereinafter provided; but such writ may, at any time before its expiration, by leave of the Court or a Judge, be renewed by the party issuing it for one year from the date of such renewal, and so on from time to time during the continuance of the renewed writ, either by being marked with a seal of the Court bearing the date of the day, month, and year of such renewal, or by such party giving a written

O. XLII. rr. 20–23.

notice of renewal to the sheriff, signed by the party or his solicitor, and bearing the like seal of the Court; and a writ of execution so renewed shall have effect, and be entitled to priority, according to the time of the original delivery thereof.

Applied to criminal proceedings by Rule 226, *ante*, p. 96.

Evidence of renewal.

21. The production of a writ of execution, or of the notice renewing the same, purporting to be marked with such seal as in the last preceding Rule mentioned, showing the same to have been renewed, shall be sufficient evidence of its having been so renewed.

Applied to criminal proceedings by Rule 227, *ante*, p. 96.

Execution within six years.

22. As between the original parties to a judgment or order, execution may issue at any time within six years from the recovery of the judgment or the date of the order.

When leave to issue is necessary.

23. In the following cases, viz.:

(*a.*) Where six years have elapsed since the judgment or date of the order, or any change has taken place by death or otherwise in the parties entitled or liable to execution;

(*b.*) Where a husband is entitled or liable to execution upon a judgment or order for or against a wife;

(*c.*) Where a party is entitled to execution upon a judgment of assets *in futuro*;

(*d.*) Where a party is entitled to execution against any of the shareholders of a joint stock company upon a judgment recorded against such company, or against a public officer or other person representing such company;

the party alleging himself to be entitled to execution may apply to the Court or a Judge for leave to issue execution accordingly. And such Court or Judge may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect, or may order that any issue or

question necessary to determine the rights of the parties shall be tried in any of the ways in which any question in an action may be tried. And in either case such Court or Judge may impose such terms as to costs or otherwise as shall be just.

Orders of Court or a Judge, how enforced.

24. Every order of the Court or a Judge in any cause or matter may be enforced against all persons bound thereby in the same manner as a judgment to the same effect.

Applied to criminal proceedings by Rule 225, *ante*, p. 96.

Commitment under Debtors Act.

25. An order of commitment under the Debtors Act, 1869, shall bear date on the day on which such order was made, and shall continue in force for one year from such date and no longer; but it may be renewed in the manner provided for writs of execution by Rule 20 of this Order.

Execution for or against person not a party.

26. Any person not being a party to a cause or matter, who obtains any order, or in whose favour any order is made, shall be entitled to enforce obedience to such order by the same process as if he were a party to such cause or matter; and any person not being a party to a cause or matter, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to such judgment or order as if he were a party to such cause or matter.

Stay of execution or other relief.

27. No proceeding by *audita querela* shall hereafter be used; but any party against whom judgment has been given may apply to the Court or a Judge for a stay of execution or other relief against such judgment, upon the ground of facts which have arisen too late to be pleaded; and the Court or Judge may give such relief and upon such terms as may be just.

Saving of rights.

28. Nothing in this Order shall take away or curtail any right heretofore existing to enforce or give effect to any judgment or order in any manner or against any person or property whatsoever.

O. XLII. rr. 29–32.

29. Nothing in this Order shall affect the order in which writs of execution may be issued.

Order of issuing writs.

Performance of act by party obtaining *mandamus*, &c.

30. If a mandamus, granted in an action or otherwise, or a mandatory order, injunction, or judgment for the specific performance of any contract be not complied with, the Court or a Judge, besides or instead of proceeding against the disobedient party for contempt, may direct that the act required to be done may be done so far as practicable by the party by whom the judgment or order has been obtained, or some other person appointed by the Court or Judge, at the cost of the disobedient party, and upon the act being done, the expenses incurred may be ascertained in such manner as the Court or a Judge may direct, and execution may issue for the amount so ascertained, and costs.

The provisions of this Rule are quite new on the Crown side.

Disobedience by corporation.

31. Any judgment or order against a corporation wilfully disobeyed may, by leave of the Court or a Judge, be enforced by sequestration against the corporate property, or by attachment against the directors or other officers thereof, or by writ of sequestration against their property.

The provisions of this Rule as to sequestration are new to the Crown side, but the process of attachment against directors or other members of a corporation has long been the only remedy for disobedience to a writ of *mandamus*.

II. Discovery in Aid of Execution.

Examination of judgment debtor.

32. When a judgment or order is for the recovery or payment of money, the party entitled to enforce it may apply to the Court or a Judge for an order that the debtor liable under such judgment or order, or in the case of a corporation that any officer thereof, be orally examined, as to whether any and what debts are owing to the debtor, and whether the debtor has any and what other property or means of satisfying the judgment or order, before a Judge or an officer of the Court as the Court or Judge shall

appoint; and the Court or Judge may make an order for the attendance and the examination of such debtor, or of any other person, and for the production of any books or documents. O. XLII. rr. 32–34.

The provisions of this Rule are new on the Crown side, and can have but little, if any, application.

33. In case of any judgment or order other than for the recovery or payment of money, if any difficulty shall arise in or about the execution or enforcement thereof, any party interested may apply to the Court or a Judge, and the Court or Judge may make such order thereon for the attendance and examination of any party or otherwise as may be just. Difficulty of enforcement of judgment other than for money.

34. The costs of any application under the last two preceding Rules, or either of them, and of any proceedings arising from or incidental thereto, shall be in the discretion of the Court or a Judge, or in the discretion of such officer as in Rule 32 mentioned, if the Court or a Judge shall so direct. Costs under two preceding rules.

WRITS.

229. All writs on the Crown side shall be issued at the Crown Office Department of the Central Office. Rr. 229, 230.

230. Every writ shall be prepared by the solicitor or party suing out the same, and shall be written or printed on parchment. Every writ shall, before being sealed, be endorsed with the name and address of such solicitor or party; and, if sued out by the solicitor as agent, with the name and address of the principal solicitor also. With the exception of writs of subpœna ad testificandum, all writs issued at the Crown Office shall be entered in a book to be there kept for the purpose. Writs to be issued at Crown Office. Issuing writs.

This Rule is substantially taken from Crown Office Rules of Hilary Term, 1844, Rule 2.

As to issuing writs of execution, see Rules 219, 220, *ante*, p. 94, and Order XLII., Rules 11 to 16, *ante*, pp. 99, 100.

Rr. 231–233.

Teste of writs.

231. Every writ except as hereinafter by these Rules provided shall bear date on the day on which the same shall be issued, and shall be tested at the Royal Courts of Justice, London, in the name of the Lord Chief Justice of England.

As to the *teste* of writs on further process to compel appearance, see Rule 234, *infra*.

As to the *teste* of certain writs on proceeding to outlawry, see Rules 100, 101, 102, 104, 110, *ante*, pp. 48—51.

When returnable.

232. Every writ, unless by these Rules otherwise provided, issued by the Queen's Bench Division, when returnable in Court, shall be made returnable forthwith in such Division; and such of the aforesaid writs as may be made returnable at Chambers, shall be made returnable forthwith before a Judge at Chambers, unless otherwise ordered: provided that every writ of habeas corpus ad subjiciendum shall be made returnable immediately.

Writs of *habeas corpus ad subjiciendum* for the purpose of discharging persons from illegal custody are made returnable immediately by virtue of the Habeas Corpus Act, 31 Car. 2, c. 2 (see Form No. 176, App., p. 239), but provision was made in the later Act of 56 Geo. 3, c. 100, s. 2, that writs issued in vacation might be made returnable in Court in the next term, and that writs issued in term might be made returnable in vacation before a Judge, in cases where the Court or a Judge might consider the writ to have been awarded too late in the term or vacation to be conveniently obeyed within the term or vacation, and the words "unless otherwise ordered" in this Rule, as applied to *habeas corpus*, would include such cases. The writ of *habeas corpus* is almost invariably in practice issued under the Common Law, and not under statute. If under statute it may still be advisable to indorse it as provided by 31 Car. 2, s. 3, *per statutum tricesimo primo Caroli secundi regis.*

Hitherto all writs of *habeas corpus* and most writs of *certiorari*, when granted by a Judge, have required his signature on the back. The forms in the Appendix substitute an indorsement, "By order of Mr. Justice ," instead of the Judge's signature. When issued by the Court such writs must be indorsed with the words "By order of the Court." See Forms.

Order to return writs.

233. Every order to return a writ shall require such return to be made within four days next after service of

such order, if served in London or Middlesex, and within eight days in all other cases. Every writ returnable in Court shall, together with the return thereto, be filed in the Crown Office, and every writ returnable before a Judge shall, after the decision of the Judge thereon, be so filed, with the return and any order made thereon, or a copy of such order; provided that any writ of certiorari to remove inquisitions and depositions taken before a justice of the peace, or a coroner, upon the commitment of any person charged with any offence, shall, as soon as the Court or a Judge shall have exercised their or his discretion thereon, be transmitted to the clerk of assize or clerk of the peace, or other officer (as the case may be) of the county, borough, or place from which they have been received. Rr. 233–235.

234. Every writ to compel an appearance shall require the appearance to be entered in the Crown Office on a day certain, and in case no appearance shall be entered at the end of four days, exclusive of the return day thereof, further process may issue to compel an appearance, which further process shall be tested on the return day of the previous process; and every writ of capias ad satisfaciendum shall have eight days at least between such teste and return. Writs to compel appearance.

HABEAS CORPUS.

A.—*Ad subjiciendum.*

235. An application for a writ of habeas corpus ad subjiciendum may be made to the Court or a Judge. Application for *habeas corpus ad subjiciendum.*

The right to this writ is at Common Law, but the granting and issuing of it has been regulated by statute.

The 16 Car. 1, c. 10, s. 8, provides for the granting of the writ in favour of any person committed by the Sovereign or the Privy Council, or any member thereof.

The 31 Car. 2, c. 2, so well known as "The Habeas Corpus Act," provides for the granting of the writ both in term and vacation in cases of imprisonment for criminal or supposed criminal offences.

Rr. 235–238.

The 56 Geo. 3, c. 100, extends the power of issuing the writ during vacation to cases not within 31 Car. 2, c. 2, and in cases within that Act enables the Court or Judge before whom the writ is returned to examine into the truth of the facts set forth in the return by affidavit or affirmation.

The 25 Vict. c. 20, restrains the issuing of the writ out of England into any colony or foreign dominion of the Crown having a Court with authority to grant such writ.

When made to the Court.

236. If made to the Court the application shall be by motion for an order, which if the Court so direct may be made absolute ex parte for the writ to issue in the first instance; or if the Court so direct they may grant an order nisi.

The application to the Court should be by counsel (*In re Newton*, 16 C. B. 99, 24 L. J., C. P. 148); but it would seem a wife may move on behalf of her husband: *Cobbett* v. *Hudson*, 15 Q. B. 988.

When made to a Judge.

237. If made to a Judge he may order the writ to issue ex parte in the first instance, or may direct a summons for the writ to issue.

As to applications at Chambers, see Rules 304, 305, *post*, p. 162. For Form of Summons, see No. 174, App., p. 238.

This Rule formulates that which has in late years grown to be the practice, namely, the granting of the writ by a Judge at Chambers as well in term as in vacation, although the Habeas Corpus Acts do not so provide. But there can be little doubt of there being ample power at Common Law for any Judge to grant the writ. And, in many cases, such as the disputed custody of children, it is much more convenient that the application should be made at Chambers. The Court of Queen's Bench has declined to hear such a case in Court, saying all such applications should, in the first instance, be made at Chambers: 11 June, 1872, coram Blackburn, Mellor, and Lush, JJ.

In extradition cases.

238. Provided that no application for a writ of habeas corpus on a warrant of extradition shall be made to a Judge at Chambers, during the sittings.

These applications arise out of the Extradition Act, 1870 (33 & 34 Vict. c. 43), but the right to the writ is a Common Law right (see *In re Besset*, 6 Q. B. 481; 14 L. J., M. C. 17). It has been the practice of late years to grant an order *nisi* only in the first instance: see *R.* v. *Ganz*, 9 Q. B. D. 93; but see *R.* v. *Portugal*, 16 Q. B. D. 492, n.

239. The writ of habeas corpus shall be served personally, if possible, upon the party to whom it is directed; or if not possible, or if the writ be directed to a gaoler or other public official, by leaving it with a servant or agent of the person confining or restraining, at the place where the prisoner is confined or restrained, and if the writ be directed to more than one person, the original delivered to or left with such principal person, and copies served or left on each of the other persons in the same manner as the writ. Service of writ.

For the various Forms applicable to proceedings by *Habeas Corpus*, see App., p. 238 *et seq.*

240. If a writ of habeas corpus be disobeyed by the person to whom it is directed, application may be made to the Court on an affidavit of service and disobedience for an attachment for contempt. In vacation an application may be made to a Judge in Chambers, for a warrant for the apprehension of the person in contempt to be brought before him, or some other Judge, to be bound over to appear in Court at the next ensuing sittings, to answer for his contempt, or to be committed to the Queen's prison for want of bail. Disobedience to writ.

Form of Affidavit of Service, No. 179, App., p. 240; of Search at Crown Office, No. 180.

241. The return to the writ of habeas corpus shall contain a copy of all the causes of the prisoner's detainer endorsed on the writ, or on a separate schedule annexed to it. Return to the writ.

See *Ex parte Besset*, 6 Q. B. 481.

If the return shows two convictions, one good the other bad, the prisoner will not be discharged: *R.* v. *Richards and Others*, 5 Q. B. 926; *Ex parte Cross*, 26 L. J., M. C. 201.

The return does not require minute exactness: *Canadian Prisoner's Case*, 9 A. & E. 731.

242. The return may be amended or another substituted for it by leave of the Court or a Judge. Amendment of return.

See *Canadian Prisoner's Case*, *supra*; *Warman's Case*, 2 W. B. 1204; and further, as to amendment in civil proceedings, Rule 299, *post*, p. 133, and note.

Rr. 243–246.

Proceedings in Court on return.

243. When a return to the writ of habeas corpus is made, the return shall first be read, and motion then made for discharging or remanding the prisoner, or amending or quashing the return.

See *R.* v. *Baines*, 12 A. & E. 213 n.; *Carus Wilson's Case*, 7 Q. B. 984.

When the return shows that the prisoner has been before a competent Court, and is in execution under the judgment of such Court, affidavits are not receivable impeaching the sentence of such Court: *Wilson's Case, supra; In re Crawford*, 18 L. J., Q. B. 225.

Discharge of prisoner without return.

244. On the argument of an order nisi for a writ of habeas corpus the Court may in its discretion direct an order to be drawn up for the prisoner's discharge, instead of waiting for the return of the writ, which order shall be a sufficient warrant to any gaoler or constable or other person for his discharge.

This has now been the practice for some years.

Order to be drawn up and return, &c., filed.

245. Upon the argument before the Court on the return of a writ of habeas corpus, the party in whose favour judgment is given shall forthwith draw up an order in accordance with the decision of the Court at the Crown Office, and the writ, and return, and affidavits, shall be filed there. When the order has been made by a Judge at Chambers, the writ, and return, with the affidavits and a copy of the Judge's order, shall be forthwith transmitted to the Crown Office to be filed.

B.—*Other writs of Habeas Corpus.*

Application for other writs of *habeas*.

246. Applications for writs of habeas corpus ad testificandum, ad respondendum, or ad deliberandum and recipias, must be made on affidavit to a Judge at Chambers.

This Rule is new, but it has long been the practice to decline to entertain applications of this nature in Court, and to refer them to Chambers: see *R.* v. *Isaacs*, 20 L. J., Q. B. 395; *Brown* v. *Gisborne*, 12 L. J., Q. B. 297; *Gordon's Case*, 2 M. & S. 582.

Habeas corpus ad respondendum.

The writ of *habeas corpus ad respondendum* may be obtained from a Judge at Chambers for bringing persons detained in custody under

civil or criminal process before magistrates or Courts of Record, as well for trial as for examination, upon some other charge (see 43 Geo. 3, c. 140, and *Ex parte Griffiths*, 5 B. & Ald. 730); and also before Courts-martial, or Commissioners of Bankrupt, Commissioners for Auditing Public Accounts, or other commissioners acting by virtue or under the authority of any commission or royal warrant: 43 Geo. 3, c. 140. Rr. 246, 247.

The application must be made *ex parte* to a Judge at Chambers upon an affidavit stating the facts of the prisoner's detention, and showing the necessity for the writ.

For Forms of Writs, see Nos. 187, 188, 189, App., pp. 243, 244.

247. An application to bring up a prisoner to give evidence on any cause or matter civil or criminal before any Court, justice, or other judicature, may be made to a Judge, on affidavit for an order. Application for order to bring up prisoner as a witness.

By 16 Vict. c. 30, s. 9, it shall be lawful for one of Her Majesty's principal Secretaries of State, or any Judge of the Court of Queen's Bench or Common Pleas, or any Baron of the Exchequer, in any case where he may see fit to do so, upon application by affidavit, to issue a warrant or order under his hand for bringing up any prisoner or person confined in any gaol, prison, or place, under any sentence, or under commitment for trial or otherwise, (except under process in any civil action, suit, or proceeding), before any Court, Judge, Justice, or other Judicature, to be examined as a witness in any cause or matter, civil or criminal, depending or to be inquired of, or determined in or before such Court, Judge, Justice, or Judicature; and the person required by any such warrant or order to be so brought before such Court, Judge, Justice, or other Judicature, shall be so brought under the same care and custody, and be dealt with in like manner in all respects, as a prisoner required by any writ of *habeas corpus* awarded by any of Her Majesty's Superior Courts of Law at Westminster to be brought before such Court to be examined as a witness in any cause or matter depending before such Court is now by law required to be dealt with.

It should be noted that this Act only applies to criminal custody, and therefore when a prisoner in civil custody is required as a witness, application must be made for a writ of *habeas corpus ad testificandum* under 44 Geo. 3, c. 102, if required to give evidence before any Court of Record, or under 43 Geo. 3, c. 140, if required to give evidence before Courts-martial or Commissioners acting by virtue or under the authority of any commission or warrant from Her Majesty.

A writ of *habeas corpus* has been issued for a prisoner to give evidence before an Election Committee of the House of Commons: *Re Price*, 4 East, 587; and see *Re Pilgrim*, 3 A. & E. 485.

Rr. 247, 248.

It would probably lie to bring a witness before a coroner, see *Ex parte Wakley*, 14 L. J., M. C. 188, but will not be granted for such a purpose without a strong case of necessity being made out: *ib.*

It lies to bring up a prisoner as a witness before an arbitrator: *Graham* v. *Glover*, 25 L. J., Q. B. 10.

It will not be granted to bring up a prisoner of war (*Furley* v. *Newnham*, Doug. 403), nor for the purpose of bringing up a sailor on board a man-of-war unless it be shown on affidavit that he is willing to attend: *R.* v. *Roddam*, Cowp. 672.

Nor for a party to a suit, to enable him to appear in Court merely for the purpose of arguing his case in person: *Weldon* v. *Neal*, 15 Q. B. D. 471, 54 L. J., Q. B. D. 399.

For form of affidavit to obtain *habeas corpus ad testificandum*, or order for a prisoner to attend as a witness, see No. 182, App., p. 241. For Form of Writ, No. 183, p. 242; or Form of Order, No. 184, *ib.*

Writs of *habeas corpus ad deliberandum* and *recipias.*

248. An application for habeas corpus ad deliberandum and recipias shall be for two writs, the writ ad deliberandum to the gaoler to deliver the prisoner, and the writ recipias to the other gaoler to receive him.

These writs are issued under 38 Geo. 3, c. 52, when a prisoner is committed to the prison of a county or town corporate, or place other than that in which he is to take his trial and is not detained for any other cause; for instance, where a prisoner is committed to the prison of a borough or town corporate, and it is intended he shall be tried in the adjoining county: they are obtained on the application of the prosecutor to a Judge at Chambers upon an affidavit verifying a copy of the commitment, and, if necessary, an affidavit stating that it is intended to prefer the indictment in the county and not in the borough, but if the necessity for the removal appears by the commitment no other affidavit is necessary.

They are also sometimes issued at common law, where it is necessary to move a prisoner from one custody to another, and no other provision has been made for the removal, because the 9th sect. of the Habeas Corpus Act, 31 Car. 2, c. 2, forbids the removal of any subject of this realm committed to any prison, or in custody of any officer for any criminal or supposed criminal matter unless by *habeas corpus*, or some other legal writ, except in certain specified cases of necessity. But there are now many statutes providing for the removal of prisoners under particular circumstances without *habeas corpus.*

The writs are usually issued at the instance of the Crown, without any notice to the opposite party, but if applied for on behalf of a prisoner there must be a previous notice to the prosecutor of the intended application: *R.* v. *Hall*, Trinity Term, 1844, per Wightman, J.

For Form of Writs, see Nos. 185 and 186, *post*, pp. 242, 243.

249. When a prisoner is brought up by habeas corpus the counsel for the prisoner shall be first heard, and then the counsel for the Crown, and then one counsel for the prisoner in reply.

Order in which counsel heard on return to *habeas*.

MOTIONS.

Here, as in regard to affidavits, a dual system has been adopted, Order LII. of the Rules of the Supreme Court being applied to all civil proceedings on the Crown side as far as it is applicable, and the following set of Rules 251 to 261 being applied to *all* proceedings on the Crown side.

It will be found that the practice of moving for an order *nisi* is generally preserved throughout. Rule 254 enacts, that except as otherwise provided by these Rules, *all* applications on the Crown side shall be made by way of motion for an *order nisi*. Rule 255 provides only a short list of applications, which are to be made on notice of motion; but at the same time Order LII. is applied as far as applicable to all civil proceedings on the Crown side, and it would seem possible that Rule 3 of that Order, directing that (with certain exceptions) no motion shall be made without previous notice to the parties affected thereby, may in some few instances come in conflict with Rule 254.

250. Order LII. of the Rules of the Supreme Court, 1883 (Motions), shall, as far as it is applicable, apply to all civil proceedings on the Crown side. The following Rules shall apply to all proceedings on the Crown side.

Application of rules.

Order LII. is subjoined to Rule 260.

251. Unless the Court or a Judge give special leave to the contrary, there shall be at least two clear days between the service of a notice of motion and the day named in the notice for hearing it.

Length of notice of motion.

This Rule is the same as Order LII., Rule 5, omitting the proviso, which is inapplicable to the Crown side.

R. 252. Orders of course.

252. The following orders of course may be drawn up at the Crown Office without any motion for the same:—

(*a.*) To appear, plead, and try (pursuant to recognizance).

(*b.*) To plead (except pleading double or several matters).

(*c.*) To demur, join in demurrer, plead any subsequent plea.

(*d.*) To assign error.

(*e.*) To join in error.

(*f.*) To bring in body of prisoner under commitment from Queen's Bench Division, where a writ of habeas corpus is not necessary.

(*g.*) For habeas corpus in cases where process has issued from the Queen's Bench Division; or where upon writ of error, the attendance of the party is necessarily required in Court, or Chambers, or at the Crown Office by the Court itself.

(*h.*) To a sheriff on a return of cepi corpus to bring in a prisoner within the proper time.

(*i.*) To return writs.

(*j.*) To tax costs.

(*k.*) To return re-stated cases.

(*l.*) To supersede attachment, or other process for compelling appearance where appearance has been entered.

(*m.*) For certiorari by consent for orders of sessions where a case has been stated, on such consent being signed by the solicitor or agent for the opposite party.

(*n.*) For an order nisi to quash orders or convictions removed by certiorari.

(*o.*) To make submission to reference an order of Court.

(*p.*) To make any other proceeding when necessary an order of Court.

(*q.*) For a view.

(*r.*) To summon a special jury.

(*s.*) To summon a jury on trial at bar.

This Rule is new, and abolishes what has hitherto been known as half-guinea hand motions, *i.e.*, Orders which might be drawn up

without actual motion to the Court, upon production at the Office of a brief signed by counsel bearing a fee of half-a-guinea, and also side-bar rules, and assimilates the two classes, and requires them to be drawn up without any further formality than an application for the same at the Crown Office.

253. All other orders shall, during the sittings, be made by the Court on motion supported by affidavit, but no affidavit shall be necessary for an order demandable as of right by the Crown, or where it is not necessary to state matters of fact. Motions to be supported by affidavits.

254. Except as may be otherwise provided by these Rules, all applications on the Crown side shall be made by way of motion to a Divisional Court for an order nisi. How made.

See note to Rule 250, *supra*.

This Rule preserves the old practice by *Rule Nisi* under the name of *Order Nisi*, and in addition hereto it will be found that throughout these Rules, in dealing with each subject-matter, the mode of application is separately provided for, and such mode is usually by way of an order to show cause.

255. The following applications shall be made upon two clear days' notice of motion, and be brought on as if they were ex parte motions and not put into the Crown paper. Applications on notice of motion.

(*a.*) For time, enlargement, stay, or security.

(*b.*) To strike a case out of the Crown paper.

(*c.*) To file a special case by leave of the Court.

(*d.*) To accelerate a case in the Crown paper on the ground of urgency.

(*e.*) To substitute a new relator on an information quo warranto for the original relator.

(*f.*) For costs to a defendant in criminal information to the amount of the recognizance.

To this list may be added applications to estreat recognizances under Rule 126, *ante*, p. 55, and for costs on mandamus, r. 77, *ante*, p. 39.

Rr. 255–260.

The notice must not expire in vacation : *Daubney* v. *Shuttleworth and Others*, 1 Ex. D. 53 ; 45 L. J. Ex. 177.

When a party is served with a notice which is bad he need not appear, and if he does he will not be entitled to the costs of doing so ; *ib.* It would seem that a substantive motion or notice should be made for them : see *In re Oakwell Colliery*, 7 Ch. D. 706, C. A. But when no one appears to support a notice of motion, the party appearing to show cause will be entitled to costs : *Berry* v. *Exchange Trading Company*, 1 Q. B. D. 77 ; 45 L. J. Q. B. 224.

Copy of affidavits to be served with notice of motion.

256. When any motion is made under Rule 255 and founded on evidence by affidavit, a copy of such affidavit intended to be used shall be served with the notice of motion.

This Rule is taken from Order LII., Rule 4, *post.*

Motion to quash.

257. All cases of conviction and of orders removed into Court from any inferior jurisdiction shall be entered for argument upon an order to show cause why the conviction or order should not be quashed.

Under the old practice a conviction for a defect apparent on the face of it might be (though of late years it seldom was) entered for argument upon a *concilium*. This Rule abolishes that procedure, provides a uniform practice, and formulates what is really the existing practice.

Orders not to be drawn up without leave.

258. No order on the Crown side, except orders of course, shall be drawn up without the leave or order of the Court or a Judge, or of the Queen's Coroner and Attorney, or the Master of the Crown Office.

When notice not served on all parties.

259. If on the hearing of a motion or other application the Court or a Judge shall be of opinion that any person to whom notice has not been given ought to have or to have had such notice, the Court or Judge may either dismiss the motion or application, or adjourn the hearing thereof, in order that such notice may be given, upon such terms, if any, as the Court or Judge may think fit to impose.

This Rule is the same as Order LII., Rule 6, *post.*

Adjourn-

260. The hearing of any motion or application may from

time to time be adjourned upon such terms, if any, as the Court or Judge shall think fit. R. 260. ment of motion.

Same as Order LII., Rule 7, *post*, p. 118.

ORDER LII. O. LII. rr. 1–3.

Motions and other Applications.

1. Where by these Rules any application is authorized to be made to the Court or a Judge, such application, if made to a Divisional Court or to a Judge in Court, shall be made by motion. Motions.

Applications to a Judge in Chambers must be made by summons : see Rules 304 and 305, *post*, p. 162.

2. No motion or application for a rule nisi or order to show cause shall hereafter be made in any action, or (*a*) to set aside, remit, or enforce an award, or (*b*) for attachment, or (*c*) to answer the matters in an affidavit, or (*d*) to strike off the rolls, or (*e*) against a sheriff to pay money levied under an execution. Abolition of rules *nisi*.

The matters referred to in this Rule, with the exception of attachment, relate exclusively to the civil side. As to applications for attachment on the Crown side : see Rule 261, *post*, p. 120.

3. Except where according to the practice existing at the time of the passing of the Principal Act any order or rule might be made absolute *ex parte* in the first instance, and except where notwithstanding Rule 2 a motion or application may be made for an order to show cause only, no motion shall be made without previous notice to the parties affected thereby. But the Court or a Judge, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, may make any order *ex parte* upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the Court or Judge may think just ; and any party affected by such order may move to set it aside. Notice of motion.

See note at the head of Motions, *ante*, p. 113, and note to Rule 254, p. 115.

O. LII. rr. 4–8.

Grounds to be stated in certain cases.

4. Every notice of motion to set aside, remit, or enforce an award, or for attachment, or to strike off the rolls, shall state in general terms the grounds of the application; and, where any such motion is founded on evidence by affidavit, a copy of any affidavit intended to be used shall be served with the notice of motion.

The application for an attachment on the Crown side is directed to be by order *nisi*: see Rule 261, *post*, p. 120. The provisions as to service of copies of affidavits is applied to all proceedings on the Crown side by Rule 256, *ante*, p. 116.

Length of notice of motion.

5. Unless the Court or a Judge give special leave to the contrary there must be at least two clear days between the service of a notice of motion and the day named in the notice for hearing the motion: provided that in applications to answer the matters in an affidavit or to strike off the rolls, the notice of motion shall be served on the parties not less than ten clear days before the time fixed by the notice for making the motion.

The first portion of this Rule is applied to all proceedings on the Crown side by Rule 251, *ante*, p. 113. The latter portion applies to a matter only dealt with on the civil side.

When notice not served on all parties who ought to have had notice.

6. If on the hearing of a motion or other application the Court or a Judge shall be of opinion that any person to whom notice has not been given ought to have or to have had such notice, the Court or Judge may either dismiss the motion or application, or adjourn the hearing thereof, in order that such notice may be given, upon such terms, if any, as the Court or Judge may think fit to impose.

This Order is applied to all proceedings on the Crown side by Rule 259, *ante*, p. 116.

Adjournment of notice.

7. The hearing of any motion or application may from time to time be adjourned upon such terms, if any, as the Court or Judge shall think fit.

This Order is applied to all proceedings on the Crown side by Rule 260, *ante*, p. 116.

Service of motion on

8. The plaintiff shall, without any special leave, be at

liberty to serve any notice of motion or other notice or any petition or summons upon any defendant, who having been duly served with a writ of summons to appear, has not appeared within the time limited for that purpose. O. LII. rr. 8–14. defendant who has not appeared.

This Rule only applies to actions.

9. The plaintiff may, by leave of the Court or a Judge to be obtained *ex parte*, serve any notice of motion upon any defendant along with the writ of summons, or at any time after service of the writ of summons and before the time limited for the appearance of such defendant. Service of notice with writ of summons.

This Rule only applies to actions.

10. *Applies to Admiralty actions.*

11. No order shall issue for the return of any writ, or to bring in the body of a person ordered to be attached or committed; but a notice from the person issuing the writ or obtaining the order for attachment or committal (if not represented by a solicitor), or by his solicitor, calling upon the sheriff to return such writ or to bring in the body within a given time, if not complied with, shall entitle such person to apply for an order for the committal of such sheriff. No order to return writ or to bring in body.

12. When any sheriff shall, before going out of office, arrest any defendant, and render return of *cepi corpus*, he may be called upon by a notice, as provided by the last preceding Rule, to bring in the body within the time allowed by law, although he may be out of office before such notice is given. Sheriff going out of office.

13. Every order, if and when drawn up, shall be dated the day of the week, month, and year, on which the same was made, unless the Court or a Judge shall otherwise direct, and shall take effect accordingly. Date of order.

This is also provided for in Rule 4, *ante*, p. 2.

14. Where an order has been made not embodying any Order not embodying

O. LII. r. 14.

special terms need not be drawn up.

special terms, nor including any special directions, but simply enlarging time for taking any proceeding or doing any act or giving leave (*a*) for the issue of any writ other than a writ of attachment, (*b*) for the amendment of any writ or pleadings, (*c*) for the filing of any document, or (*d*) for any act to be done by any officer of the Court other than a solicitor, it shall not be necessary to draw up such order unless the Court or a Judge shall otherwise direct; but the production of a note or memorandum of such order, signed by a Judge, Registrar, Master, Chief Clerk, or District Registrar, shall be sufficient authority for such enlargement of time, issue, amendment, filing, or other act. A direction that the costs of such order shall be costs in any cause or matter shall not be deemed a special direction within the meaning of this Rule. The solicitor of the person on whose application such order is made, shall forthwith give notice in writing thereof to such person (if any) as would, if this Rule had not been made, have been required to be served with such order.

Rules 15 *to* 23 *apply exclusively to Chancery and Admiralty proceedings, and have no application on the Crown side.*

ATTACHMENT FOR CONTEMPT.

R. 261.

Application for attachment.

261. An application for an attachment for contempt shall be by motion for an order nisi. The service of an order nisi for an attachment shall be personal.

Although Order LII. has been applied, as far as it is applicable, to all civil proceedings on the Crown side, and Rule 2 of that Order abolishes the practice of rule *nisi* in order to show cause for attachment, this Rule requires the application on the Crown side for an attachment to be by order *nisi*. And it would seem that as heretofore on the Crown side the application must be to the Court.

The Court has always been very strict in requiring personal service (*Swinfen* v. *Swinfen*, 1 C. B., N. S. 364; 26 L. J. C. P. 97; *Stunnell* v. *Tower*, 2 D. P. C. 673; *Birket* v. *Holme*, 4 D. P. C.

Rr. 261–264.

556; *In re Lowe and Another*, 4 B. & Ad. 412), even though it appear that the party is keeping out of the way to avoid service (*Thomas* v. *Rawlings*, 28 L. J. Ex. 347; *In re Pyne*, 1 D. & L. 703; 13 L. J. Q. B. 37); but if a party refuse to take a copy of a rule tendered (*Ellis* v. *Giles*, 5 D. P. C. 255), or by his own violence prevents a demand being made (*Wenham* v. *Downes*, 3 D. P. C. 573), or if circumstances are disclosed which satisfy the Court that the rule *nisi* has reached the hands of the party, though they show that he is keeping out of the way to avoid service (*In re Morris*, 22 L. J. Q. B. 417), the Court will dispense with a more complete service or demand, provided the other requisites have been complied with: see also *In re Whalley*, 3 D. & L. 291; 15 L. J. Ex. 4: and *In re Alcock*, 1 C. P. D. 68.

It is not sufficient to show the original order, without personal service of a copy (*Parker* v. *Burgess*, 3 N. & M. 36), but it is not necessary that the original should be placed in the defendant's hands if it is shown so that he can read the contents: *Calvert* v. *Redfearn*, 2 D. P. C. 505.

The Court has power to order persons to appear before it to answer for a contempt committed out of Court, without any proceeding for attachment: 2 Hawk. P. C. c. 22, s. 1, 8th ed. 206; *Onslow and Whalley's Case*, L. R. 9 Q. B. 219; *Skipworth's Case*, L. R. 9 Q. B. 230.

Attachment, when returnable.

262. Every writ of attachment for contempt shall be made returnable in the Queen's Bench Division on a day certain during the sittings. In case of a return of non est inventus thereon, one or more writs may issue tested on the return day of the previous writ.

For Form of Writ of Attachment, see No. 190, App., p. 244.

Habeas corpus on return of *cepi corpus*.

263. If the sheriff returns cepi corpus, on application at the Crown Office, an order shall be drawn up for a writ of habeas corpus to issue to bring in the body of the defendant.

For Form of Affidavit for *Habeas Corpus*, see No. 191, and for *Habeas Corpus*, No. 192, App., p. 245.

Interrogatories.

264. When the defendant is brought before the Court on the attachment, a motion may be made by the prosecutor, or if he does not make it, by the defendant, that he may be sworn to answer such questions or interrogatories as may be put to him by the prosecutor, and must give such bail to answer them before the Queen's Coroner and Attorney, or the Master of the Crown Office, as the Court

Rr. 264–269.

may think fit, and for the master to proceed to examine the matter and report to the Court thereon.

It must be noted that the practice on attachment on the Crown side is not assimilated with that under the Judicature Acts, and the old practice of the Queen's Bench of examining the defendant upon interrogatories is maintained.

Notice of bail is not necessary, nor is it necessary to justify: *R.* v. *Hall*, 2 W. Bl. 1110.

For Form of the Recognizance, see No. 193, App., p. 245.

Committal in default of bail.

265. In default of bail the defendant shall be committed to the Queen's Prison, but if at any time after he be prepared to give it, he may be brought before the Court or a Judge on an order on the person in whose custody he is, which order shall be drawn up on application at the Crown Office for that purpose.

As to the application for an order under this Rule, see Rule 252, *ante*, p. 114.

Order on prosecutor to file interrogatories.

266. On the defendant being sworn an order may be drawn up at the Crown Office, and served on the prosecutor to file interrogatories within four days after the service thereof. If no interrogatories are filed at the end of the fourth day, on obtaining a certificate from the Queen's Coroner and Attorney, or Master of the Crown Office to that effect, the defendant shall be discharged out of custody by an order of the Court or a Judge.

Answers to interrogatories.

267. The answers to the interrogatories shall be signed by the defendant and also acknowledged by him before any Commissioner to administer oaths in the Supreme Court of Judicature.

Master's report.

268. On an intimation to one of the parties that the master is prepared with his report, a motion may be made on a four days' notice to be served on the other party, that the master on a day certain do make his report to the Court.

Defendant to be present on

269. The defendant shall be present in Court on the master's report being made; if he be in the Queen's Prison

under process from the High Court, an order may be drawn up on application at the Crown Office for the Governor of the Queen's Prison to bring him into Court; but if he be in custody in any other prison, or under process from any other Court, the order shall be for a writ of habeas corpus which order may be drawn up in like manner and such writ issued thereon. master's report.

270. If the defendant be out on bail, the prosecutor shall, if possible, give notice to the defendant and his bail that the defendant is required personally to attend the Court on the report, and that if he does not so attend the Court will be moved to estreat the recognizance. Notice to defendant and bail to appear on report.

271. If the defendant be reported in contempt, the Court after hearing the parties on the report may either pronounce sentence at once or commit him to the Queen's Prison until some future day for that purpose, when an order shall be drawn up at the Crown Office directing the Governor of the Queen's Prison to bring the defendant into Court. Defendant in contempt.

The Court will not discuss the correctness of the master's report upon affidavits, but it is taken as a conviction or acquittal unless it manifestly appears that the master is mistaken: see *Coulson* v. *Graham*, 2 Chit. R. 57; *R.* v. *Morley*, 4 A. & E. 849.

272. On proceeding to sentence, affidavits in mitigation or aggravation may be read, and the defendant or his counsel heard, and the prosecutor's counsel be heard in reply. Procedure on sentence.

273. If the defendant be sentenced to imprisonment, the order for sentence shall be lodged with the gaoler of the prison to which he is committed. Order for sentence.

274. If the defendant is reported not to be in contempt, the Court may order him and his recognizances to be discharged, and with costs if the Court shall be of opinion that the prosecutor's complaint was groundless, and the attachment vexatious. Defendant in contempt. Costs.

This Rule is founded upon the decision in *R.* v. *Plunket*, 3 Burr. 1329, and goes one step further than the inherent jurisdiction of the

Rr. 274–278.

Court to discharge with costs any application to set the law in motion, as before an attachment can issue, there must have been an opportunity to show cause, and with the exception of the jurisdiction to discharge any application with costs, the Court has generally no power over costs in criminal cases unless given by statute, and attachment for contempt when punitive has been held to be criminal: *In re Freston*, 11 Q. B. D. 545; *In re Dudley*, 12 Q. B. D. 44, C. A.

Interrogatories to be signed by counsel.

275. All interrogatories in writing on attachments shall be signed by counsel.

Irrelevant or improper interrogatories.

276. It shall be lawful for the Queen's Coroner and Attorney or the Master of the Crown Office to disallow any question or interrogatory that he considers irrelevant or otherwise improper.

This Rule is new.

DE CONTUMACE CAPIENDO—EXCOMMUNICATO CAPIENDO.

Writ to be opened and indorsed in open Court.

277. On a writ of de contumace or de excommunicato capiendo being issued, it shall be handed to the Queen's Coroner and Attorney, or Master of the Crown Office (in open court during the sittings, to be opened and endorsed and sent to the Crown Office), and the prosecutor's solicitor may then apply at the Crown Office for the writ and shall lodge it with the sheriff for execution.

Taken from 5 Eliz. c. 23, and 53 Geo. 3, c. 127, s. 1: see *Dale's and Enraght's Cases*, 6 Q. B. D. 376; 50 L. J. Q. B. 235; 43 L. T. 769, C. A.

Hitherto it has been necessary to inrol the writ, but this Rule does away with the necessity for inrolment.

It must be lodged with the sheriff before the return day: *R.* v. *Ricketts*, 8 A. & E. 951.

As to the procedure on issuing the writ into a county palatine, see *Green* v. *Penzance and Others*, 6 App. Cas. 657; 51 L. J. Q. B. 25.

For Form of Writ and Indorsement, see No. 194, App., p. 246.

Application to set

278. On a return by the sheriff that he has taken the

defendant, an application may be made to the Court on behalf of the defendant for an order nisi to set aside the proceedings for irregularity or insufficiency, or for a writ of habeas corpus to bring up the defendant to be discharged for the want of sufficiency in the writ. Rr. 278–281. aside proceedings for irregularity.

See the cases referred to in the last preceding Rule.

279. If the sheriff returns non est inventus the prosecutor may issue a writ of capias super contumace capiendo, with a penalty of 10*l.*, which shall be tested on the return day of the contumace capiendo, and made returnable two months after the teste. If return be made to the writ of capias that the defendant has not yielded himself to prison, an alias writ of capias, with an increased penalty of 20*l.*, may be issued by the prosecutor in like manner, and so on until the defendant has yielded himself to custody, where he shall remain without bail or mainprize as if he had been taken on the original writ. Writ of *capias super contumace capiendo.*

This Rule is taken from 5 Eliz. c. 23, s. 4, and 53 Geo. 3, c. 127, s. 1.

For Form of Writ, see No. 195, App., p. 246.

ARTICLES OF THE PEACE.

The following rules under this title merely formulate the existing practice, and introduce no change of any importance.

280. An application for leave to exhibit articles of the peace in the Queen's Bench Division, and for an attachment thereon, shall be made ex parte to a Divisional Court by motion for an order absolute in the first instance. Motion for articles of the peace.

The provisions of this Rule are taken from 21 Jac. 1, c. 8.

Although magistrates may have refused to take sureties of the peace, the Queen's Bench may require them: *R.* v. *Mallinson*, 16 Q. B. 367.

281. Upon the motion being made the exhibitant shall be sworn or affirmed to the truth of the articles by the Exhibitant to be sworn in Court.

Rr. 281–287.

Master in Court, and the articles shall then be handed in and read by him.

For Form of Articles of the Peace, see No. 197, App., p. 247. When drawn, they must be engrossed on parchment, and signed by exhibitant.

Writ of attachment.

282. The writ of attachment shall be issued from the Crown Office, and may be directed to the sheriff of any county in which the defendant may be found, and shall be made returnable on a day certain.

For Form of Writ, see No. 196, App., p. 247.

Order to return writ.

283. After the return day, on application at the Crown Office, the prosecutor may obtain an order to return the writ.

See Rule 252 (*i*), *ante*, p. 114.

Return of *non est inventus*.

284. On a return of "non est inventus" the subsequent proceedings shall be the same as provided by the rules on attachment for contempt up to capture.

See Rule 262, *ante*, p. 121.

Return of *cepi corpus*.

285. On a return of cepi corpus, an order for the issuing a writ of habeas corpus to bring in the body may be obtained by the prosecutor by application at the Crown Office.

See Rule 252, *ante*, p. 114, and for Form of *Habeas Corpus*, No. 192, App., p. 245.

Motion for security for the peace.

286. On the sheriffs bringing in the body counsel may move that the defendant be ordered to find security for the peace.

Mitigation.

287. On the motion for security the articles must be read in the presence of the defendant in Court, and the defendant may file affidavits in mitigation, and be heard by himself or counsel upon them, or upon the articles, but may not contradict the truth of the matters stated in the articles.

As to the reading of the articles: see 6 Mod. R. 132.
When articles are exhibited before justices, the question for them

Rr. 287–291.

is, whether or not they believe the exhibitor on his oath, and neither the evidence tendered by the exhibitee himself or witnesses tendered on his behalf may be heard to contradict the exhibitor: *Lort* v. *Hutton*, 45 L. J. M. C. 95; 33 L. T. 730.

The defendant cannot read affidavits in contradiction of the facts sworn to against him in the articles, but may file affidavits, and be heard only with a view to reduce the amount of bail: *R.* v. *Mallinson*, 16 Q. B. 367; *R.* v. *Doherty*, 13 East, 171; *Lord Vane's Case*, *ib.*, note (*a*); 2 Str. 1202. Or he may urge objections to the insufficiency of the articles: *R.* v. *Dunn*, 12 A. & E. 599; 10 L. J. M. C. 29; *R.* v. *Stanhope*, 12 A. & E. 620, note.

Although the Court in general will not inquire into the truth of the matters stated in the articles, yet when the articles appear from the corroborated affidavits of the defendant to be a malicious, voluntary, and gross perjury, the Court may refuse the application and commit the offender: *R.* v. *Parnell*, 2 Burr. 806; *R.* v. *Mackenzie*, 3 Burr. 1922.

The recognizance.

288. The amount and conditions of the recognizance and period during which the security shall extend must be settled by the Court itself, and if the defendant is unable to find bail, the prosecutor must draw up an order for his committal to the Queen's Prison until he finds the required bail.

For Form of Recognizance, see No. 198, App., p. 248.

Bringing up defendant upon finding bail.

289. Upon finding the required bail, the defendant, on application on his behalf at the Crown Office, may obtain an order to bring up the defendant either before the Court or a judge at Chambers, to enter into the recognizance and obtain his discharge.

Certiorari to remove articles by prosecutor.

290. To remove articles of the peace originally exhibited at the assizes, or sessions of the peace, in order that an attachment may be issued upon them, an order for a writ of certiorari as of course may be obtained by the prosecutor on application at the Crown Office.

The general Form of *Certiorari*, No. 1, App., p. 165, may be adapted.

By the defendant.

291. An application on behalf of a defendant for a writ of certiorari to remove articles of the peace originally

Rr. 291–294.

exhibited at the assizes or sessions of the peace to quash the articles, and if the defendant be in custody for a writ of habeas corpus to bring up and discharge him or his recognizance, shall be made to a Divisional Court by motion for an order nisi.

Form of *Certiorari*, No. 1, App., p. 165, may be adapted. For Form of *Habeas Corpus*, see No. 176, App., p. 239.

The Court cannot interfere to reduce the amount of the security required by the magistrates: *R.* v. *Holloway*, 2 D. P. C. 525.

Proceedings on the argument.

292. On the argument of the order the Court will either discharge the defendant and his recognizance or commit him to the Queen's Prison until he find the required bail as if the articles had been originally exhibited in the Queen's Bench Division.

The Court will sometimes, on making the rule absolute, order that the defendant be discharged without being brought up: *In re Ashton and Another*, 28th April, 1845.

TIME.

Order LXIV. (Time) was previously applied to civil proceedings on the Crown side by the Rules of 1883, Order LXVIII., Rule 2.

The Rules applied to criminal proceedings are substantially taken from that Order, and are new so far as those proceedings are concerned.

Order LXIV. is subjoined after Rule 298, *post*.

Application of rules.

293. Order LXIV. of the Rules of the Supreme Court, 1883 (Time), shall, as far as it is applicable, apply to all civil proceedings on the Crown side.

The following Rules shall apply to all criminal proceedings on the Crown side.

Number of days, how computed.

294. In all cases in which any particular number of days, not expressed to be clear days, is prescribed by the Rules or the practice of the Court, the same shall be reckoned exclusively of the first day and inclusively of the last day.

This Rule is similar to Order LXIV., Rule 12.

295. Where any limited time less than six days from and after any date or event is appointed or allowed for doing any act or taking any proceeding, Sunday, Christmas Day, and Good Friday shall not be reckoned in the computation of such limited time. When Sundays, &c., not to be reckoned.

This Rule is in the same words as Order LXIV., Rule 2.

But where the time appointed is more than six days, Sundays, &c., must be counted (*Ex parte, Viney*, 4 Ch. D. 794, C. A.), unless the last day falls on one of the excepted days: *Taylor* v. *Jones*, 45 L. J., C. P. 110. And see next Rule.

296. Where the time for doing any act or taking any proceeding expires on a Sunday or other days on which the offices are closed, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, as far as regards the time of doing or taking the same, be held to be duly done or taken, if done or taken, on the day on which the office shall next be opened. When time expires on Sunday, &c.

This Rule is the same as Order LXIV., Rule 3.

See note to last preceding Rule.

297. A Court or a Judge shall have power to enlarge or abridge the time appointed by these Rules, or fixed by any order enlarging time for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require; and any such enlargement may be ordered at the discretion of the Court or a Judge, although the application for the same is not made until after the expiration of the time appointed or allowed. Power to enlarge or abridge time.

This is substantially the same as Order LXIV., Rule 7.

As to extension of time for appealing to the Court of Appeal, see Order LVIII., Rule 15, and the note to that Rule, *ante*, p. 92.

As to the costs of extension of time, see Order LXV., Rule 27 (24).

298. In all causes in which there have been no proceedings for one year from the last proceeding had, the party, whether prosecutor or defendant, who desires to proceed, shall give a calendar month's notice to the other party of his intention to proceed. A summons of a Judge, on which no Lapse of a year in proceeding.

R. 298. order has been made, shall not be deemed a proceeding within this Rule. Notice of trial, though afterwards countermanded, shall be deemed a proceeding within it.

This Rule is substantially the same as Order LXIV., Rule 13.

This Rule cannot be said to be altogether new, as, although there was no written Rule on the subject on the Crown side, a similar practice existed requiring a clear term's notice when no proceedings had been taken for a year: see Corner's C. P., p. 132.

O. LXIV. rr. 1–3.

ORDER LXIV.

Time.

Interpretation of word "month."

1. Where by these Rules, or by any judgment or order given or made after the commencement of the Principal Act, time for doing any act or taking any proceeding is limited by months, and where the word "month" occurs in any document which is part of any legal procedure under these Rules, such time shall be computed by calendar months, unless otherwise expressed.

When Sunday, &c., not to be reckoned.

2. Where any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceeding, Sunday, Christmas Day, and Good Friday shall not be reckoned in the computation of such limited time.

This Rule is also applied to criminal proceedings by Rule 295: see note to that Rule, *ante*, p. 129.

When time expires on Sunday, &c.

3. Where the time for doing any act or taking any proceeding expires on a Sunday, or other day on which the offices are closed, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open.

The provisions of this Rule are also applied to criminal proceedings on the Crown side: see Rule 296, *ante*, p. 129.

O. LXIV. rr. 4–10.

4. No pleadings shall be amended or delivered in the long vacation, unless directed by a Court or a Judge. Pleading in long vacation.

Under the old practice there was no exception as to pleadings in the long vacation on the Crown side. This Rule will apply to the pleadings on *mandamus*, *quo warranto*, and prohibition, but as it has not been applied to criminal proceedings, it will not affect pleadings on indictments or criminal informations.

5. The time of the long vacation shall not be reckoned in the computation of the times appointed or allowed by these Rules for filing, amending, or delivering any pleading, unless otherwise directed by the Court or a Judge. Long vacation not to be reckoned in time for pleading.

6. The day on which an order for security for costs is served, and the time thenceforward until and including the day on which such security is given, shall not be reckoned in the computation of time allowed to plead, answer interrogatories, or take any other proceeding in the cause or matter. Security for costs, how time computed.

7. The Court or a Judge shall have power to enlarge or abridge the time appointed by these Rules, or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed. Power to enlarge or abridge time.

This Rule is also applied to criminal proceedings: see Rule 297, *ante*, p. 129.

An Order for this purpose need not be drawn up: see Order LII., Rule 14, *ante*, p. 119.

As to costs under this Rule, see Order XLV., Rule 27 (24).

8. The time for delivering, amending, or filing any pleading, answer, or other document may be enlarged by consent in writing, without application to the Court or a Judge. Enlargement of time by consent.

As to costs under this Rule, see Order LXV., Rule 27 (24).

9. *Relates to Admiralty actions only.* Admiralty.

10. *Relates to Admiralty actions only.* Admiralty

O. LXIV. rr. 11–15.

Hours for service.

11. Service of pleadings, notices, summonses, orders, rules, and other proceedings, shall be effected before the hour of six in the afternoon, except on Saturdays, when it shall be effected before the hour of two in the afternoon. Service effected after six in the afternoon on any week day except Saturday shall, for the purpose of computing any period of time subsequent to such service, be deemed to have been effected on the following day. Service effected after two in the afternoon on Saturday shall for the like purpose be deemed to have been effected on the following Monday.

Number of days, how computed.

12. In any case in which any particular number of days, not expressed to be clear days, is prescribed by these Rules, the same shall be reckoned exclusively of the first day and inclusively of the last day.

The provisions of this Rule are also applied to criminal proceedings: see Rule 294, *ante*, p. 128.

Lapse of a year in proceedings.

13. In any cause or matter in which there has been no proceeding for one year from the last proceeding had, the party who desires to proceed shall give a month's notice to the other party of his intention to proceed. A summons on which no order has been made shall not, but notice of trial although countermanded shall be deemed a proceeding within this Rule.

The provisions of this Rule are also applied to criminal proceedings: see Rule 298, *ante*, p. 129.

Time for setting aside award.

14. An application to set aside an award may be made at any time before the last day of the sittings next after such award has been made and published to the parties.

Admiralty.

15. *Relates to Admiralty actions only.*

AMENDMENT.

299. Order XXVIII. of the Rules of the Supreme Court, 1883 (Amendment), shall, as far as it is applicable, apply to all civil proceedings on the Crown side.

Application of Order XXVIII. (Amendment).

The Order as to amendment hereby applied (as far as applicable) to civil proceedings on the Crown side was first applied in a similar manner by Order LXVIII., Rule 2, of the Rules of the Supreme Court, 1883.

As to amendment in criminal matters, it may be useful to cite the following :—

(*a.*) Amendment by the Queen's Bench Division of judgments, 11 Geo. 4, c. 70, s. 9 : see *R.* v. *Nott*, 4 Q. B. 768.

(*b.*) Amendment of indictments or informations in certain cases by Courts of oyer and terminer, 11 & 12 Vict. c. 46, s. 4.

(*c.*) Amendment of indictments by Courts of General or Quarter Sessions under similar circumstances, 12 & 13 Vict. c. 45, s. 10.

(*d.*) Amendment in indictments of certain variances not material to the merits of the case, 14 & 15 Vict. c. 100, ss. 1, 2, and 3.

(*e.*) Certain defects in indictments not to vitiate the indictment, 14 & 15 Vict. c. 100, s. 24.

(*f.*) Formal defects in indictments cured by verdict : see *R.* v. *Goldsmith*, L. R., 2 C. C. 74 ; 42 L. J., M. C. 94. But the word "indictment" does not include information ; *R.* v. *Slator*, 8 Q. B. D. 267.

(*g.*) Amendment of *Postea*, *R.* v. *Virrier*, 12 A. & E. 317.

(*h.*) Amendment of judgment upon writ of error, 11 & 12 Vict. c. 78, s. 5 ; Rule 202, *ante*, p. 82 ; 16 & 17 Vict. c. 32, s. 3.

(*i.*) Amendment of orders or judgments of Justices of the Peace, 12 & 13 Vict. c. 45, s. 7. As to cases of amendment by the Queen's Bench Division under this section, see *R.* v. *Higham*, 7 E. & B. 557 ; 26 L. J., M. C. 116 ; *R.* v. *Hellingley*, 28 L. J., M. C. 167 ; as to cases in which amendments will not be made under the Act, *R.* v. *Cridland*, 7 E. & B. 853 ; 27 L. J., M. C. 28 ; *R.* v. *Kay*, L. R., 8 Q. B. 324 ; *R.* v. *Tomlinson*, *ib.* 12.

(*k.*) Amendment of recognizances at sessions, 12 & 13 Vict. c. 45, s. 8.

(*l.*) Amendment of determination of justices upon a case stated, 20 & 21 Vict. c. 43, s. 6 : see *Shackell* v. *West*, 2 E. & E. 326 ; 29 L. J., M. C. 45.

R. 299.

(*m.*) Amendment by justices of the peace of informations, convictions, or warrants of commitments for offences under the customs laws, 39 & 40 Vict. c. 36, s. 243.

(*n.*) Amendment upon return to writ of *certiorari*, *R.* v. *Atkinson*, 4 East, 175, n.

(*o.*) Amendment of return to *habeas corpus*: *Warman's Case*, W. B. 1204; *Canadian Prisoners Case*, 9 A. & E. 731; *S. C.*, 1 Per. & Dav. 516.

(*p.*) Informations filed in the Queen's Bench Division may, by the present practice, be amended at any time before jury sworn, by order of the Court or a Judge: *R.* v. *Dean and Others*, Trin. T., 1838.

(*q.*) Pleadings in like manner may also be so amended.

It should be noted that the Act 9 Geo. 4, c. 15, providing for the amendment of certain variances on the record has been repealed: see 42 & 43 Vict. c. 59; 46 & 47 Vict. c. 49, s. 4.

O. XXVIII. rr. 1, 2.

ORDER XXVIII.

Amendment.

Amendment of pleadings, &c.

1. The Court or a Judge may, at any stage of the proceedings, allow either party to alter or amend his indorsement or pleadings, in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

As to the principle on which amendments should be allowed, see *Tildesley* v. *Harper*, 10 Ch. D. 393, C. A.

An Order under this Rule need not be drawn up; see Order LII. Rule 14, *post*, p. 119.

Statement of claim.

2. The plaintiff may, without any leave, amend his statement of claim, whether indorsed on the writ or not, once at any time before the expiration of the time limited for reply and before replying, or, where no defence is delivered, at any time before the expiration of four weeks from the appearance of the defendant who shall have last appeared.

This and the next three following Rules have no application to the proceedings on the Crown side.

3. A defendant who has set up any counter-claim or set-off may, without any leave, amend such counter-claim or set-off at any time before the expiration of the time allowed him for answering the reply and before such answer, or in case there be no reply then at any time before the expiration of twenty-eight days from defence. Counter-claim or set-off.

See note to Rule 2.

4. Where any party has amended his pleading under either of the last two preceding Rules, the opposite party may, within eight days after the delivery to him of the amended pleading apply to the Court or a Judge to disallow the amendment, or any part thereof, and the Court or Judge may, if satisfied that the justice of the case requires it, disallow the same, or allow it subject to such terms as to costs or otherwise as may be just. Disallowance of amendment.

5. Where any party has amended his pleading under Rules 2 or 3, the opposite party shall plead to the amended pleading, or amend his pleading, within the time he then has to plead or within eight days from the delivery of the amendment, whichever shall last expire; and in case the opposite party has pleaded before the delivery of the amendment, and does not plead again or amend within the time above mentioned, he shall be deemed to rely on his original pleading in answer to such amendment. Pleading after amendment.

6. In all cases not provided for by the preceding Rules of this Order, application for leave to amend may be made by either party to the Court or a Judge, or to the Judge at the trial of the action, and such amendment may be allowed upon such terms as to costs or otherwise as may be just. Application for leave to amend.

7. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited, then within fourteen days from the date of the order, such order to amend shall, on the expiration of such When amendment not made within time limited.

O. XXVIII. rr. 7–13.

limited time as aforesaid, or of such fourteen days, as the case may be, become *ipso facto* void, unless the time is extended by the Court or a Judge.

Mode of amendment.

8. An indorsement or pleading may be amended by written alterations in the copy which has been delivered, and by additions on paper to be interleaved therewith if necessary, unless the amendments require the insertion of more than 144 words in any one place, or are so numerous or of such a nature that the making them in writing would render the document difficult or inconvenient to read, in either of which cases the amendment must be made by delivering a print of the document as amended.

The Rules as to printing pleadings, Order XIX., Rule 9, is not applied to the Crown side.

Amended pleading to be marked.

9. Whenever any indorsement or pleading is amended, the same, when amended, shall be marked with the date of the order, if any, under which the same is so amended, and of the day on which such amendment is made, in manner following, viz.: "Amended day of , pursuant to order of dated the of ."

Amended pleading to be delivered.

10. Whenever any indorsement or pleading is amended, such amended document shall be delivered to the opposite party within the time allowed for amending the same.

Clerical errors.

11. Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court or a Judge on motion or summons without an appeal.

Amendment of defect or error.

12. The Court or a Judge may at any time, and on such terms as to costs or otherwise as the Court or Judge may think just, amend any defect or error in any proceedings, and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceedings.

Costs of

13. The costs of and occasioned by any amendment made

pursuant to Rules 2 and 3 of this Order shall be borne by the party making the same, unless the Court or a Judge shall otherwise order. O. XXVIII. r. 13.

There are no proceedings on the Crown side to which this Rule will apply. certain amendments.

COSTS.

300. Order LXV. of the Rules of the Supreme Court, 1883 (Costs), shall, as far as it is applicable, apply to all civil proceedings on the Crown side. R. 300.

Application of Order LXV. to civil proceedings.

The order of the Rules of the Supreme Court as to costs was first appled to civil proceedings on the Crown side by the Rules of the Supreme Court, 1880 (Order LXII., Rule 2), which was re-enacted by Order LXVIII. of the Rules of the Supreme Court, 1883, Rule 2, and is again incorporated by this Rule.

Order LXV., as far as it is necessary, is subjoined after the next following Rule.

In criminal cases there is no general provision for costs, and they can only be obtained where there is some Statute specially providing for them; but the Court has always exercised a power of discharging with costs an application, such as a rule for a *certiorari*, or for a criminal information, and rules of a like nature.

An order of sessions made upon an appeal against a poor rate removed into the Queen's Bench Division is a civil proceeding, and costs in the Queen's Bench Division may be awarded under this Rule: *R.* v. *Alderbury Union*, sub nom. *Clark* v. *Fisherton-Angar (Overseers)*, 6 Q. B. D. 139. So is a rule for a *certiorari* to remove an order of justices under sect. 158 of the Public Health Act, 1875: *R.* v. *Morris*, 31 W. R. 609; but if made upon an appeal against a conviction it is a criminal matter, and the costs cannot be dealt with: *R.* v. *Baxendale*, 6 Q. B. D. 144, note; 50 L. J., M. C. 35, note.

See further as to what proceedings are criminal or civil, note to Rule 216, *ante*, p. 86.

The words "costs shall follow the event" mean the result of all the proceedings incidental to the litigation, and where there has been a new trial, they include the costs of the first trial, and of the order for the new trial: *Creen* v. *Wright*, 2 C. P. D. 354; *Field* v. *Great Northern Railway Company*, 3 Ex. D. 261.

The Court has power to award costs, notwithstanding that it may not have jurisdiction to hear the case: *McIntosh* v. *Lord*

R. 301.

Advocate, 2 App. Cas. 41, H. L.; *Great Northern Railway Company* v. *Inett*, 2 Q. B. D. 284; *Brown* v. *Shaw*, 1 Ex. D. 425, not followed.

Application of general regulations, Rule 27, to criminal proceedings.

301. Order LXV. of the Rules of the Supreme Court, 1883 (Costs), special and general regulations, Rule 27, shall, as far as it is applicable, apply to all criminal proceedings on the Crown side.

O. LXV. rr. 1–3.

ORDER LXV.

Costs.

General rule as to costs.

1. Subject to the provisions of the Acts and these Rules, the costs of and incident to all proceedings in the Supreme Court, including the administration of estates and trusts, shall be in the discretion of the Court or Judge; Provided that nothing herein contained shall deprive an executor, administrator, trustee, or mortgagee who has not unreasonably instituted or carried on or resisted any proceedings, of any right to costs out of a particular estate or fund to which he would be entitled according to the rules hitherto acted upon in the Chancery Division: Provided also that, where any action, cause, matter, or issue is tried with a jury, the costs shall follow the event, unless the Judge by whom such action, cause, matter, or issue is tried, or the Court, shall, for good cause, otherwise order.

This Rule impliedly repeals all previous enactments inconsistent with it: *Garnett* v. *Bradley*, 3 App. Cas. 944, H. L.; 48 L. J., Ex. 186: see also *Tenant* v. *Ellis*, 6 Q. B. D. 46; 50 L. J., Q. B. 143; *Parsons* v. *Tinling*, 2 C. P. D. 119: and where an Act is silent it supplies the omission: *Ex parte Mercers' Company*, 10 Ch. D. 481; 48 L. J., Ch. 384; *Ex parte Hospital of St. Katharine*, 17 Ch. D. 378.

Issues in fact and law upon claim or counterclaim.

2. When issues in fact and law are raised upon a claim or counterclaim, the costs of the several issues respectively, both in law and fact, shall, unless otherwise ordered, follow the event.

Cause re-

3. If a cause be removed from an inferior Court, having

jurisdiction in the cause, the costs in the Court below shall be costs in the cause. O. LXV. rr. 3–8.

4. *Relates to an action ordered to be tried in a County Court under* 19 *&* 20 *Vict. c.* 108, *s.* 26, *and has no application to proceedings on the Crown side.* Cases removed from inferior Court.

5. Where upon the trial of any cause or matter it appears that the same cannot conveniently proceed by reason of the solicitor for any party having neglected to attend personally, or by some proper person on his behalf, or having omitted to deliver any paper necessary for the use of the Court or Judge, and which according to the practice ought to have been delivered, such solicitor shall personally pay to all or any of the parties such costs as the Court or Judge shall think fit to award. Costs against solicitor in certain cases of negligence.

See further, where costs may be given against a solicitor upon an application for a *quo warranto*, Rule 56, *ante*, p. 32.

6. In any cause or matter in which security for costs is required, the security shall be of such amount, and be given at such times, and in such manner and form, as the Court or a Judge shall direct. Security for costs.

6A. A plaintiff ordinarily resident out of the jurisdiction may be ordered to give security for costs, though he may be temporarily resident within the jurisdiction. Security by plaintiff out of jurisdiction.

7. Where a bond is to be given as security for costs, it shall, unless the Court or a Judge shall otherwise direct, be given to the party or person requiring the security, and not to an officer of the Court. Security by bond.

8. In causes and matters commenced after these Rules come into operation, solicitors shall be entitled to charge and be allowed the fees set forth in the column headed "lower scale" in Appendix N. in all causes and matters, and no higher fees shall be allowed in any case, except such as are by this Order otherwise provided for; and in causes and matters pending at the time when these Rules come into operation, to which the higher scale of costs previously Lower scale.

O. LXV. rr. 8–11.

in force was applicable, the same scale shall continue to be applied.

For scale see *post*, p. 255.

Higher scale.

9. The fees set forth in the column headed "higher scale" in Appendix N. may be allowed, either generally in any cause or matter, or as to the costs of any particular application made, or business done, in any cause or matter, if, on special grounds arising out of the nature and importance, or the difficulty or urgency of the case, the Court or a Judge shall, at the trial or hearing, or further consideration of the cause or matter, or at the hearing of any application therein, whether the cause or matter shall or shall not be brought to trial or hearing or to further consideration (as the case may be), so order; or if the taxing officer, under directions given to him for that purpose by the Court or a Judge, shall think that such allowance ought to be so made upon such special grounds as aforesaid.

Allowance of higher scale between solicitor and client.

10. Upon any reference to a taxing officer to tax a bill of costs of a solicitor for the purpose of ascertaining the amount due to such solicitor in respect thereof from the person to be charged therewith, if such bill shall include charges for business done in any cause or matter, the taxing officer may allow the fees set forth in the column headed "higher scale" in Appendix N. in respect of such cause or matter, or in respect of any particular application made or business done therein, if on such special grounds, as are in the last preceding Rule mentioned, he shall think that such allowance ought to be so made.

Disallowance of costs improperly incurred between solicitor and client.

11. If in any case it shall appear to the Court or a Judge that costs have been improperly or without any reasonable cause incurred, or that by reason of any undue delay in proceeding under any judgment or order, or of any misconduct or default of the solicitor, any costs properly incurred have nevertheless proved fruitless to the person incurring the same, the Court or Judge may call on the solicitor of the person by whom such costs have been so

incurred to show cause why such costs should not be disallowed as between the solicitor and his client, and also (if the circumstances of the case shall require) why the solicitor should not repay to his client any costs which the client may have been ordered to pay to any other person, and thereupon may make such order as the justice of the case may require. The Court or Judge may, if they or he think fit, refer the matter to a taxing officer for inquiry and report; and direct the solicitor in the first place to show cause before such taxing officer, and may also, if they or he think fit, direct or authorise the Official Solicitor of the Supreme Court to attend and take part in such inquiry. Such notice (if any) of the proceedings or order shall be given to the client in such manner as the Court or Judge may direct. Any costs of the Official Solicitor shall be paid by such parties, or out of such funds as the Court or a Judge may direct; or, if not otherwise paid, may be paid out of such moneys (if any) as may be provided by Parliament.

12. *Relates to actions founded on contract, and has no application to proceedings on the Crown side.*

13. *Relates to the costs of a solicitor who is guardian ad litem.*

Set-off for damages and costs.

14. A set-off for damages or costs between parties may be allowed notwithstanding the solicitor's lien for costs in the particular cause or matter in which the set-off is sought.

Costs on award.

15. Costs may be taxed on an award, notwithstanding the time for setting aside the award has not elapsed.

Notice of taxation.

16. One day's notice of taxing costs, together with a copy of the bill of costs and affidavit of increase (if any), shall be given by the solicitor of the party whose costs are to be taxed to the other party or his solicitor, in all cases where a notice to tax is necessary.

Unnecessary where defendant has not appeared.

17. Notice of taxing costs shall not be necessary in any case where the defendant has not appeared in person, or by his solicitor or guardian.

18. *Relates only to taxations in the Chancery Division.*

O. LXV. rr. 18–19D.

Masters to assist each other in taxing.

19. The taxing masters shall be respectively assistant to each other, and in the discharge of their duties; and, for the better despatch of the business of their respective offices, any taxing master may tax or assist in the taxation of a bill of costs which has been referred to any other taxing master for taxation, and for ascertaining what is due in respect of such costs, and in such case shall certify accordingly.

Abolition of warrants on taxing.

19A. The following warrants in the office of the taxing masters of the Chancery Division shall be abolished:—Warrant on leaving, warrant to bring in, and warrant to tax.

Order directing taxation to be left with taxing master with statement.

19B. Within seven days from the date of the passing of an order directing a taxation of costs, the solicitor having the conduct of the order shall leave at the office of the proper taxing master a copy of the order, and (annexed thereto) a statement containing the names and addresses of the parties appearing in person, and of the solicitors representing the several parties to the cause or matter who do not appear in person, and the names and the nature of the interest of the parties represented by each solicitor.

It would seem that this Rule, and Rules 19, C., D., and F. can only have application in the Chancery Division. The regulations followed on the Crown side are of a simpler and more expeditious character.

Notice of appointment to proceed with taxation.

19C. On the copy order being left a notice of an appointment to proceed with the taxation shall forthwith be issued by the taxing master to the solicitor having the conduct of the order, and a copy of such order shall be sent by post by the solicitor having the conduct of the order to the solicitors of such of the parties as the taxing master shall direct.

It would seem that in the fourth line of this Rule the word "order" has been inadvertently used instead of the word "appointment," as no doubt it is the copy of the appointment which should be served and not a copy of the order.

Bill of costs and vouchers to be left with master.

19D. At the time mentioned in the notice the taxing master shall appoint a time within which the bills of costs (with all necessary papers and vouchers) shall be left at his office, and he shall give all requisite directions for the

conduct of the taxation pursuant to Regulation (27) of this Order.

Taxation to be continued without interruption.

19E. The taxation shall, if possible, be continued without interruption till completed, but if adjourned for any reason, notice of the adjournment shall be sent by the taxing master by post to any solicitor not present at the time of the adjournment whose attendance he may desire at the next appointment.

Notice to tax forthwith.

19F. In cases in which the solicitors leave their bills with the proper papers and vouchers, and with the copy order as above mentioned, the taxing master may, if he shall think fit, forthwith issue a notice as in these Rules provided, fixing a time at which the taxation shall be proceeded with.

Penalty for delaying or impeding taxation.

19G. Any solicitor who shall fail to leave his bill of costs (with the necessary papers and vouchers) within the time or extended time fixed by the taxing master for that purpose, or who shall in any way delay or impede the taxation, shall, unless the taxing master otherwise directs, forfeit the fees to which he would otherwise be entitled for drawing his bill of costs, and for attending the taxation, and the taxing master may also, if he shall think fit, exercise all or any of the powers vested in him by Regulations (28) and (55) of this Order.

Separate columns for disbursement and professional charges.

19H. In every bill of costs the professional charges shall be entered in a separate column from the disbursements, and every column shall be cast before the bill is left for taxation.

The provisions of this Rule are new.

20. *Relates only to the taxation of bills of costs in the Chancery Division.*

21. *Relates only to taxations in the Chancery Division.*

22. *Relates only to taxations in the Chancery Division.*

Lump sum in lieu of taxed costs.

23. Upon interlocutory applications where the Court or a Judge shall think fit to award costs to any party, the Court or Judge may by the order direct payment of a sum in gross

O. LXV. rr. 23–27.

in lieu of taxed costs, and direct by and to whom such sum in gross shall be paid.

24. *Fees under the Charitable Trusts Act*, 1853, *s.* 28.

25. *Matter commenced by summons under the Act in the last preceding Rule.*

26. *Fees and allowances under the Act* 22 *&* 23 *Vict. c.* 35, *s.* 30.

Special Allowances and General Regulations.

Extent of application.

27. The following special allowances and general regulations shall apply to all proceedings and all taxations in the Supreme Court of Judicature.

Notwithstanding the wide words of this Rule, it has not hitherto applied to criminal proceedings on the Crown side by reason of the exception contained in Order LXVIII.; but it is now applied by Rule 301, *ante*, p. 138.

Allowance in lieu of fees for instructions, &c.

(1.) As to writs of summons requiring special indorsement, and as to special cases, pleadings, and affidavits in answer to interrogatories, and other special affidavits, and admissions under Order XXXII., Rule 4, the taxing officer may, in lieu of the allowances for instructions and preparing or drawing, and attendances, make such allowance for work, labour, and expenses in or about the preparation of such documents as in his discretion he may think proper.

Allowance for drawing to include copy for solicitor, &c.

(2.) As to drawing any pleading or other document, the fees allowed shall include any copy made for the use of the solicitor, agent, or client, or for counsel to settle.

Fee for instructions to sue or defend may be increased.

(3.) As to instructions to sue or defend, or the preparation of briefs, if the taxing officer shall, on special grounds, consider the fee in either scale provided inadequate, he may make such further allowance as he shall in his discretion consider reasonable.

Affidavits.

(4.) As to affidavits, when there are several deponents to be sworn, or it is necessary for the purpose of an affidavit

being sworn to go to a distance, or to employ an agent, such reasonable allowance may be made as the taxing officer in his discretion may think fit.

Instructions for drawing affidavits.

(5.) The allowances for instructions and drawing an affidavit in answer to interrogatories and other special affidavits, and attending the deponent to be sworn, include all attendances on the deponent to settle and read over.

Same solicitor for both parties.

(6.) As to delivery of pleadings, services, and notices, the fees are not to be allowed when the same solicitor is for both parties, unless it be necessary for the purpose of making an affidavit of service.

Perusals.

(7.) As to perusals, the fees are not to apply where the same solicitor is for both parties.

Same solicitor, several defendants, separate pleadings.

(8.) Where the same solicitor is employed for two or more defendants, and separate pleadings are delivered or other proceedings had by or for two or more such defendants separately, the taxing officer shall consider in the taxation of such solicitor's bill of costs, either between party and party or between solicitor and client, whether such separate pleadings or other proceedings were necessary or proper, and if he is of opinion that any part of the costs occasioned thereby has been unnecessarily or improperly incurred, the same shall be disallowed.

Evidence.

(9.) As to evidence, such just and reasonable charges and expenses as appear to have been properly incurred in procuring evidence, and the attendance of witnesses, are to be allowed.

Agency correspondence.

(10.) As to agency correspondence, in country agency causes and matters, if it be shown to the satisfaction of the taxing officer that such correspondence has been special and extensive, he is to be at liberty to make such special allowance in respect thereof as in his discretion he may think proper.

(11.) *Applies only to the attendance of solicitors upon the Registrars in the Chancery Division.*

O. LXV. r. 27.

Attendances at Judges' Chambers.

(12.) As to attendances at the Judges' Chambers, where from the length of the attendance, or from the difficulty of the case, the Judge or Master shall think the highest of the fees an insufficient remuneration for the services performed, or where the preparation of the case or matter to lay it before the Judge or Master in Chambers, or on a summons, shall have required skill and labour for which no fee has been allowed, the Judge or Master may allow such fee, in lieu of the fee of 1*l.* 1*s.* provided, not exceeding 2*l.* 2*s.*, or where the higher scale is applicable, 3*l.* 3*s.*, or in proceedings to wind up a company 5*l.* 5*s.*, as in his discretion he may think fit; and where the preparation of the case or matter to lay it before a Judge at Chambers on a summons shall have required and received from the solicitor such extraordinary skill and labour as materially to conduce to the satisfactory and speedy disposal of the business, and therefore shall appear to the Judge to deserve higher remuneration than the ordinary fees, the Judge may allow to the solicitor, by a memorandum in writing expressly made for that purpose and signed by the Judge, specifying distinctly the grounds of such allowance, such fee, not exceeding 10 guineas, as in his discretion he may think fit, instead of the fees of 2*l.* 2*s.*, 3*l.* 3*s.*, and 5*l.* 5*s.*

Costs occasioned by non-attendance at Chambers or neglect.

(13.) As to attendances at the Judges' Chambers, where, by reason of the non-attendance of any party (unless it be considered expedient to proceed *ex parte*), or where by reason of the neglect of any party in not being prepared with any proper evidence, account, or other proceeding, the attendance is adjourned without any useful progress being made, the Judge may order such an amount of costs (if any) as he shall think reasonable to be paid to the party attending by the party so absent or neglectful, or by his solicitor personally; and the party so absent or neglectful is not to be allowed any fee as against any other party, or any estate or fund in which any other party is interested.

Length of folio.

(14.) A folio is to comprise 72 words, every figure com-

prised in a column, or authorised to be used, being counted as one word. O. LXV. r. 27.

(15.) Such costs of procuring the advice of counsel on the pleadings, evidence, and proceedings in any cause or matter as the taxing officer shall in his discretion think just and reasonable, and of procuring counsel to settle such pleadings and special affidavits as the taxing officer shall in his discretion think proper to be settled by counsel, are to be allowed; but as to affidavits a separate fee is not to be allowed for each affidavit, but one fee for all the affidavits proper to be so settled, which are or ought to be filed at the same time. Advice of counsel.

(16.) As to counsel attending at Judges' Chambers, no costs thereof shall in any case be allowed, unless the Judge certifies it to be a proper case for counsel to attend. Counsel at Chambers.

(17.) As to inspection of documents under Order XXXI., Rule 15, no allowance is to be made for any notice or inspection, unless it is shown to the satisfaction of the taxing officer that there were good and sufficient reasons for giving such notice and making such inspection. Inspection of documents.

(18.) As to taking copies of documents in possession of another party, or extracts therefrom, under Rules of Court or any special order, the party entitled to take the copy or extract is to pay the solicitor of the party producing the document for such copy or extract as he may, by writing, require, at the rate of 4*d.* per folio; and if the solicitor of the party producing the document refuses or neglects to supply the same, the solicitor requiring the copy or extract is to be at liberty to make it, and the solicitor for the party producing is not to be entitled to any fee in respect thereof. Taking copies from another party.

(19.) *Relates only to the Chancery Division.*

(20.) The Court or Judge may, at the hearing of any cause or matter, or upon any application or proceeding in any cause or matter in Court or at Chambers, and whether the same Improper, vexatious, and unnecessary matter.

O. LXV. r. 27.

is objected to or not, direct the costs of any indorsement on a writ of summons, pleading, summons, affidavit, evidence, notice requiring a statement of claim, notice to produce, admit, or cross-examine witnesses, account, statement, procuring discovery by interrogatories or order, applications for time, bills of costs, service of notice of motion or summons, or other proceeding, or any part thereof, which is improper, vexatious, unnecessary, or contains vexatious or unnecessary matter, or is of unnecessary length, or caused by misconduct or negligence, to be disallowed, or may direct the taxing officer to look into the same and to disallow the costs thereof, or of such part thereof as he shall find to be improper, unnecessary, vexatious, or to contain unnecessary matter, or to be of unnecessary length, or caused by misconduct or negligence; and in such case the party whose costs are so disallowed shall pay the costs occasioned thereby to the other parties; and in any case where such question shall not have been raised before and dealt with by the Court or Judge, it shall be the duty of the taxing officer to look into the same (and, as to evidence, although the same may be entered as read in any decree or order) for the purpose aforesaid, and thereupon the same consequences shall ensue as if he had been specially directed to do so: and in the Queen's Bench Division the Master shall make such order as may be required to effect the object of this regulation.

Set-off.

(21.) In any case in which, under the last preceding regulation, or any other Rule of Court, or by the order or direction of a Court or Judge, or otherwise, a party entitled to receive costs is liable to pay costs to any other party, the taxing officer may tax the costs such party is so liable to pay, and may adjust the same by way of deduction or set-off, or may, if he shall think fit, delay the allowance of the costs such party is entitled to receive until he has paid or tendered the costs he is liable to pay; or such officer may allow or certify the costs to be paid, and direct payment thereof, and the same may be recovered by the party entitled

thereto in the same manner as costs ordered to be paid may be recovered. O. LXV. r. 27.

See further, Regulation (55).

(22.) *Relates only to the Chancery Division.*

(23.) Where any party appears upon any application or proceeding in Court or at Chambers, in which he is not interested, or upon which, according to the practice of the Court, he ought not to attend, he is not to be allowed any costs of such appearance unless the Court or Judge shall expressly direct such costs to be allowed. Unnecessary attendance.

(24.) The costs of applications to extend the time for taking any proceedings shall be in the discretion of the taxing officer, unless the Court or Judge shall have specially directed how the costs are to be paid or borne. The taxing officer shall not allow the costs of more than one extension of time, unless he is satisfied that such extension was necessary, and could not, with due diligence, have been avoided. The costs of a summons to extend time shall not be allowed in cases to which Rule 8 of Order LXIV. applies, unless the party taking out such summons has previously applied to the opposite party to consent, and he has not given a consent, to a sufficient extension of time, or the taxing officer shall consider there was a good reason for not making such application; and in case the taxing officer shall not allow the costs of such summons, and shall consider that the party applying ought to pay the costs of any other party occasioned thereby, he may direct such payment, or deal with such costs, in the manner provided by Regulation (21). Costs of applications to extend time.

(25.) The taxing officers of the Supreme Court, or of any Division thereof, shall, for the purpose of any proceeding before them, have power and authority to administer oaths, and shall, in relation to the taxation of costs, perform all such duties as have heretofore been or are by general orders directed to be performed by any of the masters, taxing masters, registrars, or other officers of any of the Courts Powers of taxing officers.

O. LXV. r. 27.

whose jurisdiction is by the Principal Act transferred to the High Court of Justice or Court of Appeal, and shall, in respect thereof, have such powers and authorities as previous to the commencement of the Principal Act were, or by general orders are, vested in any of such officers, including examining witnesses, directing production of books, papers, and documents, making separate certificates or *allocaturs*, requiring any party to be represented by a separate solicitor, and to direct and adopt all such other proceedings as could be directed and adopted by any such officer on references for the taxation of costs, and taking accounts of what is due in respect of such costs, and such other accounts connected therewith as may be directed by the Court or a Judge.

Where account consists in part of bill of costs.

(26.) Where an account consists in part of any bill of costs, the Court or Judge may direct the taxing officer to assist in settling such costs, not being the ordinary costs of passing the account of a receiver, and the taxing officer, on receiving such direction, shall proceed to tax such costs, and shall have the same powers, and the same fees shall be payable in respect thereof, as if the same had been referred to the taxing officer by an order; and he shall return the same, with his opinion thereon, to the Court or Judge by whose direction the same were taxed.

What parties to attend taxation.

(27.) The taxing officer shall have authority to arrange and direct what parties are to attend before him on the taxation of costs to be borne by a fund or estate, and to disallow the costs of any party whose attendance such officer shall in his discretion consider unnecessary in consequence of the interest of such party in such fund or estate being small or remote, or sufficiently protected by other parties interested.

Neglect to bring in costs.

(28.) When any party entitled to costs refuses or neglects to bring in his costs for taxation, or to procure the same to be taxed, and thereby prejudices any other party, the taxing officer shall be at liberty to certify the costs of the other

parties, and certify such refusal or neglect, or may allow such party refusing or neglecting a nominal or other sum for such costs, so as to prevent any other party being prejudiced by such refusal or neglect. O. LXV. r. 27.

(29.) As to costs to be paid or borne by another party, no costs are be allowed which do not appear to the taxing officer to have been necessary or proper for the attainment of justice or defending the rights of the party, or which appear to the taxing officer to have been incurred through over-caution, negligence, or mistake, or merely at the desire of the party. Disallowance of unnecessary costs.

(30.) As to any work and labour properly performed and not herein provided for, and in respect of which fees have heretofore been allowed, the same or similar fees are to be allowed for such work and labour as have heretofore been allowed. Costs not provided for.

(31.) Where the plaintiff is directed to pay to the defendant the costs of the cause, the costs occasioned to a defendant by any amendment of the plaintiff's pleadings shall be deemed to be part of such defendant's costs in the cause (except as to any amendment which shall appear to have been rendered necessary by the default of such defendant); but there shall be deducted from such costs any sum which may have been paid by the plaintiff according to the course of the Court at the time of any amendment. Where pleadings have been amended.

(32.) Where upon taxation a plaintiff who has obtained a judgment with costs is not allowed the costs of any amendment of his pleadings on the ground of the same having been unnecessary, the defendant's costs occasioned by such amendment shall be taxed, and the amount thereof deducted from the costs to be paid by the defendant to the plaintiff. Defendant's costs where costs of plaintiff's amendment disallowed.

(33.) Where an action or petition is dismissed with costs, or a motion is refused with costs, or any costs are by any general or special order directed to be paid, the taxing officer may tax such costs without any order referring the Taxation without order to tax.

O. LXV. r. 27.

same for taxation, unless the Court or a Judge upon the application of the party alleging himself to be aggrieved prohibits the taxation of such costs.

Tender for costs.

(34.) Where it is directed that costs shall be taxed in case the parties differ about the same, the party claiming the costs shall bring the bill of costs into the office of the proper taxing officer, and give notice of his having so done to the other party, and at any time within eight days after such notice such other party shall have liberty to inspect the same without fee, if he thinks fit. And at or before the expiration of the eight days, or such further time as the taxing officer shall in his discretion allow, such other party shall either agree to pay the costs or signify his dissent therefrom, and shall thereupon be at liberty to tender a sum of money for the costs; but where he makes no such tender, or where the party claiming the costs refuses to accept the sum so tendered, the taxing officer shall proceed to tax the costs; and where the taxed costs shall not exceed the sum tendered, the costs of the taxation shall be borne by the party claiming the costs.

Where costs are to be paid out of fund in Court.

(35.) Where any costs are by any judgment or order directed to be taxed and to be paid out of any money or fund in Court, the taxing officer in his certificate of taxation shall state the total amount of all such costs as taxed without any direction for that purpose in such judgment or order.

Fees to accountants, &c., and scientific persons on reference.

(36.) The allowances in respect of fees to the Conveyancing Counsel of the Court, and to any accountants, merchants, engineers, actuaries, and other scientific persons to whom any question is referred, shall be regulated by the taxing officers, subject to appeal to the Court or Judge, whose decision shall be final.

Preservation of prior allowances not inconsistent with

(37.) The rules, orders, and practice of any Court whose jurisdiction is transferred to the High Court of Justice or Court of Appeal, relating to costs, and the allowance of the fees of solicitors and attorneys, and the taxation of costs,

existing prior to the commencement of the principal Act, shall, in so far as they are not inconsistent with the principal Act and these Rules, remain in force and be applicable to costs of the same or analogous proceedings, and to the allowance of the fees of solicitors of the Supreme Court and the taxation of costs in the High Court of Justice and Court of Appeal. O. LXV. r. 27. Act or rules.

See *Pringle* v. *Gloag*, 10 Ch. D. 676, C. A.

(38.) As to all fees or allowances which are discretionary, the same are, unless otherwise provided, to be allowed at the discretion of the taxing officer, who, in the exercise of such discretion, is to take into consideration the other fees and allowances to the solicitor and counsel, if any, in respect of the work to which any such allowance applies, the nature and importance of the cause or matter, the amount involved, the interest of the parties, the fund or persons to bear the costs, the general conduct and costs of the proceedings, and all other circumstances: and where a party is entitled to sign judgment for his costs, the taxing officer, in taxing the costs, may allow a fixed sum for the costs of the judgment. Discretion of taxing masters.

(39.) Any party who may be dissatisfied with the allowance or disallowance by the taxing officer, in any bill of costs taxed by him, of the whole or any part of any items, may, at any time before the certificate or *allocatur* is signed, deliver to the other party interested therein, and carry in before the taxing officer, an objection in writing to such allowance or disallowance, specifying therein by a list, in a short and concise form, the items, or parts thereof, objected to, and the grounds and reasons for such objections, and may thereupon apply to the taxing officer to review the taxation in respect of the same. Objections to taxation.

(40.) Upon such application the taxing officer shall reconsider and review his taxation upon such objections, and he may, if he shall think fit, receive further evidence in respect thereof, and, if so required by either party, he shall state either in his certificate of taxation or *allocatur*, or by reference Taxing master to review his taxation.

O. LXV. r. 27.

to such objection, the grounds and reasons of his decision thereon, and any special facts or circumstances relating thereto.

Order to review taxation.

(41.) Any party who may be dissatisfied with the certificate or *allocatur* of the taxing officer, as to any item or part of an item which may have been objected to as aforesaid, may within 14 days from the date of the certificate or *allocatur*, or such other time as the Court or Judge, or taxing officer, at the time he signs his certificate or *allocatur*, may allow, apply to a Judge at Chambers for an order to review the taxation as to the same item or part of an item, and the Judge may thereupon make such order as the Judge may think just; but the certificate or *allocatur* of the taxing officer shall be final and conclusive as to all matters which shall not have been objected to in manner aforesaid.

Evidence on review of taxation.

(42.) Such application shall be heard and determined by the Judge upon the evidence which shall have been brought in before the taxing officer, and no further evidence shall be received upon the hearing thereof, unless the Judge shall otherwise direct.

(43.) *Application of Rules to proceedings in District Registry.*

Retainers.

(44.) No retaining fee to counsel shall be allowed on taxation as between party and party.

Conferences.

(45.) Fees for conferences are not to be allowed in any cause or matter in addition to the solicitor's and counsel's fees for drawing and settling, or perusing any pleadings, affidavits, deeds, or other proceedings or abstracts of title, or for advising thereon, unless it shall appear to the taxing officer for some special reason that a conference was necessary or proper.

(46.) *Cases under Rule* 12 *of this Order in which the scale of costs in County Courts is applicable.*

Allowance of two junior counsel.

(47.) Where the costs of retaining two counsel may properly be allowed, such allowance may be made although

both such counsel may have been selected from the outer bar. O. LXV. r. 27.

(48.) As to refresher fees, when any cause or matter is to be tried or heard upon *vivâ voce* evidence in open Court, if the trial shall extend over more than one day, and shall occupy either on the first day only, or partly on the first and partly on a subsequent day or days, more than five hours, without being concluded, the taxing officer may allow, for every clear day subsequent to that on which the five hours shall have expired, the following fees:— Refreshers.

To the leading counsel . .	from 5 to 10 guineas.
To the second, if three counsel	,, 3 to 7 ,,
To the third, if three counsel, or the second, if only two .	,, 3 to 5 ,,

The like allowances may be made where the evidence in chief is not taken *vivâ voce*, if the trial on hearing shall be substantially prolonged beyond such period of five hours, to be so computed as aforesaid, by the cross-examination of witnesses whose affidavits or depositions have been used.

(49.) Where a cause or matter shall not be brought on for trial or hearing, the costs of and consequent on the preparation and delivery of briefs shall not be allowed if the taxing officer shall be of opinion that such costs were prematurely incurred. Premature delivery of briefs.

(50.) Where a cause or matter which stands for trial is called on to be tried, but cannot be decided by reason of a want of parties or other defect on part of the plaintiff, and is therefore struck out of the paper, and the same cause is again set down, the defendant shall be allowed the taxed costs occasioned by the first setting down, although he does not obtain the costs of the cause or matter. Cause struck out for default of plaintiff.

(51.) The following fees are to be allowed to counsels' clerks:— Fees to counsels' clerks.

	£	*s.*	*d.*
Upon a fee under 5 guineas . . .	0	2	6
5 guineas and under 10 guineas . .	0	5	0

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	£	s.	d.
10 guineas and under 20 guineas	0	10	0
20 guineas and under 30 guineas	0	15	0
30 guineas and under 50 guineas	1	0	0
50 guineas and upwards, per cent.	2	10	0
On consultations, senior's clerk	0	5	0
On consultations, junior's clerk	0	2	6
On conferences	0	5	0
On retainers (where allowed):			
General retainer	0	10	6
Common retainer	0	2	6

Counsel's signature to vouchers.

(52.) No fee to counsel shall be allowed on taxation unless vouched by his signature.

Office copy, when unnecessary.

(53.) In cases in which an original affidavit can be used, and to which Order XXXVIII., Rule 15, applies, it shall not be necessary to take an office copy.

Of affidavit of discovery.

(54.) It shall not be necessary to take an office copy of an affidavit of discovery of documents, and the copy delivered by the party filing it may be used as against such party.

Improper expense on taxation.

(55.) Where, in proceedings before the taxing officer, any party is guilty of neglect or delay, or puts any other party to any unnecessary or improper expense relative to such proceedings, the taxing officer may direct such party or his solicitor to pay such costs as he may think proper, or deal with them under Regulation (21).

Where costs to be paid out of any fund or property.

(56.) Where in any cause or matter any bill of costs is directed to be taxed for the purpose of being paid or raised out of any fund or property, the taxing officer may, if he shall consider there is a reasonable ground for so doing, require the solicitor to deliver or send to his clients, or any of them, free of charge, a copy of such bill, or any part thereof, previously to such officer completing the taxation thereof, accompanied by any statement such officer may direct, and by a letter informing such client that the bill of costs has been referred to the taxing officer, giving his

name and address for taxation, and will be proceeded with at the time the officer shall have appointed for this purpose, and such officer may suspend the taxation for such time as he may consider reasonable. O. LXV. r. 27.

(57.) The taxing officer shall have power to limit or extend the time for any proceeding before him, and where, by any general order, or any order of the Court or a Judge, a time is appointed for any proceeding before or by a taxing officer, unless the Court or Judge shall otherwise direct, such officer shall have power from time to time to extend the time appointed upon such terms (if any) as the justice of the case may require, and although the application for the same is not made until after the expiration of the time appointed, it shall not be necessary to make a certificate or order for this purpose, unless required for any special purpose. Limit and extension of time on taxation.

(58.) Every bill of costs which shall be left for taxation shall be endorsed with the name and address of the solicitor by whom it is so left, and also the name and address of the solicitor, if any, for whom he is agent, including any solicitor who is entitled or intended to participate in the costs to be so taxed. Indorsement of bill of costs.

NOTICES.

302. Order LXVI. of the Rules of the Supreme Court, 1883 (Notices), shall, as far as it is applicable, apply to all civil proceedings on the Crown side. R. 302. Application to civil proceedings.

This Rule is now applied for the first time to civil proceedings on the Crown side, as far as it is applicable. As no new Rules relating to notices in criminal proceedings on the Crown side have been made, the old practice remains unaltered by virtue of Rule 2, *ante*, p. 1.

Order LXVI. is subjoined.

O. LXVI. rr. 1–7.

ORDER LXVI.

Notices, Printing, Paper, Copies, Office Copies, Minutes, &c.

Notices to be in writing.

1. All notices required by these Rules shall be in writing, unless expressly authorized by the Court or a Judge to be given orally.

Papers left at Chambers to be on foolscap.

2. All accounts, copies, and papers left at Chambers, shall be written upon foolscap paper, bookwise, unless the nature of the document renders it impracticable.

Printing.

3. Proceedings required to be printed shall be printed on cream wove machine drawing foolscap folio paper, 19 lbs. per mill ream, or thereabouts, in pica type leaded, with an inner margin about three-quarters of an inch wide, and an outer margin about two inches and a half wide.

Affidavits.

4. Any affidavit may be sworn to either in print or in manuscript, or partly in print and partly in manuscript.

This has already been provided for in Rule 12, *ante*, p. 5.
For regulations as to affidavits, see title "Affidavits," *ante*, p. 2.

Depositions to be printed.

5. Where any written deposition of a witness has been filed, such deposition shall be printed, unless otherwise ordered.

Depositions, &c., previously used.

6. The Rules of Court as to printing depositions and affidavits to be used on a trial shall not apply to depositions and affidavits which have previously been used upon any proceeding without having been printed.

Regulations as to printing.

7. Where, pursuant to these Rules, any pleading, notice, special case, petition of right, deposition, or affidavit is to be printed, and where any printed or other office copy of any such document is to be taken, the following regulations shall be observed:

Party to print.

(*a.*) The party on whose behalf the deposition or affidavit is taken and filed is to print the same in the manner provided by Rule 3 of this Order:

(*b.*) To enable the party printing, to print any deposition or affidavit, the officer with whom it is filed shall on demand deliver to such party a copy written on draft paper on one side only: Copy for printing.

(*c.*) The party printing shall, on demand in writing, furnish to any other party any number of printed copies, not exceeding ten, upon payment therefor at the rate of 1*d.* per folio for one copy, and ½*d.* per folio for every other copy: Supply to other party.

(*d.*) As between a solicitor delivering any printed copies and his client, credit shall be given by the solicitor for the whole amount payable by any other party for such printed copies: Credit for copies supplied to other party.

(*e.*) The party entitled to be furnished with a print shall not be allowed any charge in respect of a written copy, unless the Court or a Judge shall otherwise direct: Written copies.

(*f.*) Except as provided by Order LV., Rule 48, the party by or on whose behalf any deposition, affidavit, or certificate is filed shall leave a copy with the officer with whom the same is filed, who shall examine it with the original and mark it as an office copy; such copy shall be a copy printed as above provided where such deposition or affidavit is to be printed: Office copy.

(*g.*) The party or solicitor who has taken any printed or written office copy of any deposition or affidavit is to produce the same upon every proceeding to which the same relates: Production of office copy.

(*h.*) Where any party is entitled to a copy of any deposition, affidavit, proceeding, or document filed or prepared by or on behalf of another party, which is not required to be printed, such copy shall be furnished by the party by or on whose behalf the same has been filed or prepared: Furnishing copies when not printed.

But under Rule 26, *ante*, p. 9, party showing cause against order *nisi* must take an office copy.

O. LXVI. r. 7.

Written application for copy.

(*i.*) The party requiring any such copy, or his solicitor, is to make a written application to the party by whom the copy is to be furnished, or his solicitor, with an undertaking to pay the proper charges, and thereupon such copy is to be made and ready to be delivered at the expiration of twenty-four hours after the receipt of such request and undertaking, or within such other time as the Court or a Judge may in any case direct, and is to be furnished accordingly upon demand and payment of the proper charges :

(*j.*) *Relates only to an ex parte application for an injunction or writ of ne exeat regno.*

Affidavit to state on whose behalf filed.

(*k.*) It shall be stated *in a note at the foot* of every affidavit filed on whose behalf it is so filed, and such note shall be printed on every printed copy of an affidavit or set of affidavits, and copied on every office copy and copy furnished to a party :

But by Rule 15, *ante*, p. 6, this note is required to be indorsed.

Indorsement of name and address.

(*l.*) The name and address of the party or solicitor by whom any copy is furnished is to be indorsed thereon in like manner as upon proceedings in Court, and such party or solicitor is to be answerable for the same being a true copy of the original, or of an office copy of the original, of which it purports to be a copy, as the case may be :

Folios to be marked.

(*m.*) The folios of all printed and written office copies, and copies delivered or furnished to a party, shall be numbered consecutively in the margin thereof, and such written copies shall be written in a neat and legible manner on the same paper as in the case of printed copies :

Refusal or neglect to furnish copies.

(*n.*) In case any party or solicitor who shall be required to furnish any such written copy as aforesaid shall either refuse or, for twenty-four hours from

the time when the application for such copy has been made, neglect to furnish the same, the person by whom such application shall be made shall be at liberty to procure an office copy from the office in which the original shall have been filed, and in such case no costs shall be payable to the solicitor so making default in respect of the copy so applied for: O. LXVI. r. 7.

(*o.*) Where, by any order of the Court (whether of appeal or otherwise) or a Judge, any pleading, evidence, or other document is ordered to be printed, the Court or Judge may order the expense of printing to be borne and allowed, and printed copies to be furnished by and to such parties and upon such terms as shall be thought fit. Expense of printing.

8. *Relates to Admiralty actions only.*

9. *Relates to Admiralty actions only.*

NON-COMPLIANCE.

303. Order LXX. of the Rules of the Supreme Court, 1883 (Effect of non-compliance), shall, as far as it is applicable, apply to all proceedings on the Crown side, civil or criminal. R. 303. Application of O. LXX. to civil proceedings.

This Order was applied to civil proceedings on the Crown side by the Rules of the Supreme Court, 1883, Order LXVIII., *post*, p. 278, and is subjoined.

ORDER LXX. O. LXX. r. 1.

EFFECT OF NON-COMPLIANCE.

1. Non-compliance with any of these Rules, or with any rule of practice for the time being in force, shall not render any proceedings void unless the Court or a Judge shall so Proceeding not be rendered void.

O. LXX. rr. 1–4.

direct, but such proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the Court or Judge shall think fit.

Application to set aside to be made promptly.

2. No application to set aside any proceeding for irregularity shall be allowed unless made within reasonable time, nor if the party applying has taken any fresh step after knowledge of the irregularity.

Grounds to be stated.

3. Where an application is made to set aside proceedings for irregularity, the several objections intended to be insisted upon shall be stated in the summons or notice of motion.

Costs.

4. When a summons is taken out to set aside any process or proceeding for irregularity with costs, and the summons is dismissed generally without any special direction as to costs, it is to be understood as dismissed with costs.

APPLICATIONS AT CHAMBERS.

Rr. 304, 305.

304. In every proceeding, civil or criminal, on the Crown side at chambers, the summons shall be issued from, and the order drawn up at, the Crown Office.

Summonses and orders to be drawn up at Crown Office.

This Rule is new. Hitherto summonses and orders made in Chambers have been issued at the Summons and Order Department.

Summonses not to be issued without leave.

305. No summons to show cause before a Judge at chambers shall be issued in the following matters without the leave of a Judge upon an ex parte application :—

(*a.*) For a writ of mandamus.
(*b.*) For a writ of certiorari.
(*c.*) For a writ of habeas corpus.
(*d.*) For a writ of prohibition.
(*e.*) For bail in felony.

This Rule is new, but practically introduces no change in the practice.

INTERPRETATION CLAUSE.

306. In these Rules, unless repugnant to the context, the singular number shall include the plural, and the plural number shall include the singular. Interpretation of terms.

"Crown side" means the Crown side of the Queen's Bench Division.

Judge at Chambers shall include a Judge at chambers in London and elsewhere.

Judgment shall include order and conviction.

See also s. 100 of Judicature Act, 1873, *post*, p. 289.

REPEAL.

307. Order LIII., Part II., of the Rules of the Supreme Court, 1883 (Prerogative Mandamus), is hereby repealed. Repeal of Order LIII. Part II.

The repealed Order related to the proceedings on the prerogative writ of *mandamus*, and is necessitated by reason of its provisions having been reproduced in these Rules, *ante*, pp. 34—39.

FORMS.

308. The forms in the Appendix when applicable, and where not applicable forms of the like character as near as may be, shall be used in all proceedings on the Crown side. Forms.

By s. 100 of the Judicature Act, 1873, *post*, p. 290, "Rules of Court" shall include forms.

(Signed) Halsbury, C.
Coleridge, C.J.
Esher, M.R.
James Hannen, Prest. P.D.A.
Nathl. Lindley, L.J.
Edw. Fry, L.J.
C. E. Pollock, B.
H. Manisty, J.

December 18, 1885.

APPENDIX TO CROWN OFFICE RULES, 1886.

FORMS.

[See Rule 308.]

No. 1.

General Form of Writ of Certiorari for Orders, &c.

VICTORIA, by the Grace of God, of the United Kingdom of Great Britain and Ireland, Queen, Defender of the Faith, to [*here insert direction*] to *A. B.* [and *C. D.* and *E. F.*] and to every of them greeting: We being willing for certain reasons that [*here insert description of order or other proceeding to be removed from the order for the certiorari*]

.

.

(as is said) be sent by you before Us, do command you, and every of you that you or one of you do send forthwith under your hands [*or* seals] or the hand [*or* seal] of one of you before Us, in the Queen's Bench Division of Our High Court of Justice at the Royal Courts of Justice, London, all and singular the said orders [*or* the said order] with all things touching the same as fully and perfectly as they [*or* it may] have been made by you [*or* some of you], and now remain in your custody or power, together with this Our writ, that we may cause further to be done thereon what of right and according to the law and custom of England We shall see fit to be done. Witness, John Duke, Baron Coleridge, at the Royal Courts of Justice, London, the day of in the year of Our Lord one thousand eight hundred and eighty-six.

To be indorsed.

By order of Court [*or* of Mr. Justice].
At the instance of
This writ was issued by *M. N.*, of *X.*, solicitor for [*or*, if the case be so, "agent for" *G. H.*, the solicitor for].

No. 2.

Affidavit in support of Application for Certiorari to remove Indictment into the Queen's Bench Division.

In the High Court of Justice,
Queen's Bench Division.
I, *A. B.*, of, &c. , make oath and say as follows:
1. That at the general quarter sessions of the peace holden at

in and for the county of , on or about the day of , a bill of indictment was preferred to the grand jury who returned a true bill [*or that it is intended to prefer a bill of indictment, as the case may be*].

2. That, in my judgment and belief, nice and intricate questions or points of law will arise on the trial of the said indictment, which will render it important that the same should be tried before one of the learned Judges of the High Court of Justice, and particularly, that a question will, as I am advised, be raised as to whether [*state the particular question that will arise, or that a question will arise upon the construction of an Act of Parliament*].

3. That, in my judgment and belief, it will be material and necessary that the said indictment should be tried by a special jury, which cannot be had, unless the said indictment be removed into this honourable Court. And that I [*or as the case may be*] will cause a special jury to be had if the said indictment should be so removed.

4. That I verily believe that it will be important and necessary that a view of the place and premises in question should be had by some of the jurymen to be impanelled, to try the issue joined upon the said indictment, which I am informed and believe can only be had by the said indictment being removed into this honourable Court.

5. That, by reason of [*here state what has occurred to create prejudice*], I verily believe that strong prejudices have been created in the minds of some of the justices who may preside at the sessions upon the trial of the said indictment. And also among that class of persons in the said place, from whom the common jurors are selected for the trials at the said sessions, and some of whom are likely to be called upon the jury for the trial of the said indictment, unless the same be removed into this honourable Court. And, therefore, that a fair and impartial trial of the same cannot be had at the said sessions.

6. That [*add any other allegation which may be likely to induce the Court or a Judge to grant the writ of Certiorari, consistent with the facts and circumstances of the case required to be removed*].

[*Omit any of the foregoing allegations which may not be applicable to the case.*]

[NOTE.—See r. 29, *ante*, p. 14, for the grounds upon which indictment may be removed.]

No. 3.

Summons for Certiorari to remove Indictment into the Queen's Bench Division.

In the High Court of Justice,
Queen's Bench Division.

* Here insert name of judge.

*The Honourable Mr. Justice in Chambers.

Upon reading the affidavit of , filed the day of 188 , and upon hearing counsel [*or* the solicitor] for the Defendant [*or* Prosecutor]—

It is ordered that the prosecutor [*or* defendant] attend the Judge in Chambers on the day of 18 , at the hour of in the noon, upon the hearing of an application for a writ of Certiorari directed to the keepers of the peace and justices in and for the county of [*or as the case may be*] to remove into this division all and singular indictments of

whatsoever misdemeanors [*or* felonies] whereof *A. B.* is [*or* may be, *if indictment not preferred*] before them indicted.

At the instance of the Defendant [*or* Prosecutor].

Dated the day of 188 .

This summons was taken out by , of , solicitor for

To .

[NOTE.—As to when application may be made at Chambers see r. 28, *ante*, p. 13.]

No. 4.

Judge's Order for Certiorari to remove Indictment into the Queen's Bench Division. (*See* Rule 30.)

In the High Court of Justice,
Queen's Bench Division.

*The Honourable Mr. Justice in Chambers.

Upon reading the affidavit of , filed the day of 188 , and upon hearing counsel on both sides [*or as the case may be*]—

It is ordered that a writ of Certiorari issue directed to the keepers of the peace and justices in and for the county of [*or as the case may be*] to remove into this division all and singular indictments of whatsoever misdemeanors [*or* felonies] whereof *A. B.* is [*or* may be, *if indictment not preferred*] before them indicted.

At the instance of the defendant [*or* prosecutor].

And it is further ordered that the amount of the recognizance to be entered into be by the defendant [*or* prosecutor] in the sum of £ , with two sureties in the sum of £ each.

Dated, &c.

* Here insert name of judge.

[NOTE.—See also rr. 28, 29, *ante*, pp. 13, 14].

No. 5.

Summons to remove Indictment from Assizes or Central Criminal Court into the Queen's Bench Division.

In the High Court of Justice,
Queen's Bench Division.

The Honourable Mr. Justice in Chambers.

Upon reading the affidavit of , filed the day of 188 , and upon hearing counsel [*or* the solicitor] for the Prosecutor [*or* Defendant]—

It is ordered that the defendant [*or* prosecutor] attend the Judge in Chambers on the day of next, upon the hearing of an application for an order that all and singular indictments of whatsoever misdemeanors [*or* felonies] whereof *A. B.* is [*or* may be] before the justices of Oyer and Terminer, in and for the county [*or* city] of [*or* before the Justices of the Central Criminal Court] indicted be removed into this division [*if from Central Criminal Court add*] for trial in

and for the county of Middlesex (*or* Essex, Kent, *or* Surrey, *or* the City of London, *as the case may be*)] (*a*).

At the instance of the prosecutor [*or* defendant].

Dated, &c.

This summons, &c. [*as in Form No.* 3] (*b*).

[NOTE (*a*).—As to the necessity for this statement see r. 41, *ante*, p. 24.]

[NOTE (*b*).—See note to r. 28, *ante*, p. 13. The Central Criminal Court is not mentioned in r. 28, and it may be advisable to make use of the Writ of Certiorari, Form 8, when removing indictments from that court.]

No. 6.

Judge's Order to remove Indictment from Assizes or Central Criminal Court into the Queen's Bench Division.

In the High Court of Justice,
Queen's Bench Division.
The Honourable Mr. Justice in Chambers.

Upon reading the affidavit of , filed the day of 188 , and upon hearing counsel [*or* the solicitors] on both sides [*or as the case may be*]—

It is ordered that [*as in the Summons, No.* 5] and that the clerk of assize for the said county [*or* city] [*or* the clerk of the Central Criminal Court] do send forthwith the said indictments into the said Queen's Bench Division.

At the instance of the prosecutor [*or* defendant].

And it is further ordered that the amount of the recognizance, &c. [*as in No.* 4].

Dated, &c.

[NOTE.—See note to last Form.]

No. 7.

Certiorari to remove Indictment into the Queen's Bench Division.

Victoria, by the Grace of God, &c., to
and to every of them, greeting: We being willing, for certain reasons, that all and singular indictments of whatsoever felonies [*or* misdemeanors] whereof *A. B.* is [*if indictment not yet preferred, add*, or may be] before you indicted (as is said), be determined before Us, in the Queen's Bench Division of Our High Court of Justice, and not elsewhere, do command you and every of you, that you or one of you do forthwith send under your seals, or the seal of one of you, before Us in Our said Court at the Royal Courts of Justice, London, all and singular the said indictments, with all things touching the same, by whatsoever name the said *A. B.* may be called therein, together with this Our writ, that we may cause further to be done thereon what of right and according to the law and custom of England we shall see fit to be done.

Witness, &c.

To be indorsed.

By order of Court [*or* of Mr. Justice , *as the case may be*].

At the instance of the prosecutor [*or* defendant].

Recognizance by the prosecutor [*or* defendant] in the sum of £ , with [*two*] sureties in the sum of £ each.

This writ was issued by , of , agent for of , solicitor for the prosecutor [*or* defendant].

[NOTE.—If the indictment is to be removed from the sessions of a county, say: "*to the keepers of Our Peace and Our Justices assigned to hear and determine divers crimes, trespasses and other offences committed within our county*

of "; or if from the sessions of a borough, say, "*to A. B., Esquire, the Recorder of our borough of , in the county of , our Justice assigned, &c.*," as above.

If from assizes, say, "*to Our Justices of Oyer and Terminer in and for our County of* ."]

No. 8.

Writ of Certiorari to Remove Indictment from the Central Criminal Court.

Victoria, by the Grace of God, &c., to Our Justices of the Central Criminal Court, and to every of them, greeting: We being willing, for certain reasons, that all and singular indictments of whatsoever felonies [*or* misdemeanors] whereof *A. B.* is [*if indictment not yet preferred add*, or may be] before you indicted (as is said), be determined before Us in the Queen's Bench Division of Our High Court of Justice, and not elsewhere, do command you and every of you, that you or one of you do forthwith send under your seals, or the seal of one of you, before Us in our said Court, at the Royal Courts of Justice, London, all and singular the said indictments, with all things touching the same, by whatsoever name the said *A. B.* may be called therein, together with this Our writ, that we may cause further to be done thereon for the trial of the said indictment in and for the county of Middlesex [*or* Essex, Kent, Surrey, *or* City of London, *as the case may be* (*a*)], what of right and according to the law and custom of England we shall see fit to be done. Witness, &c.

Indorsement as in Form No. 7.

[NOTE (*a*).—As to the necessity for this statement, see r. 41, *ante*, p. 24.]

No. 9.

Writ of Certiorari to remove Indictment into Central Criminal Court.

Victoria, by the Grace of God, &c., to
We being willing, for certain reasons, that all and singular indictments * be determined before Our Justices of the Central Criminal Court, and not elsewhere, do command you and every of you, that you or one of you do send under your seals, or the seal of one of you, before Our said Justices of the Central Criminal Court, at the next Sessions to be holden for the jurisdiction of the said Central Criminal Court, at Justice Hall, in the Old Bailey, in the suburbs of Our City of London,† all and singular the said indictments, with all things touching the same, by whatsoever name the said may be called therein, together with this Our writ, that Our said Justices of the Central Criminal Court may cause further to be done thereon what of right and according to the law and custom of England they shall see fit to be done. Witness, &c.

To be indorsed.

By order of Court [*or* of Mr. Justice].
At the instance of the prosecutor [*or* defendant].

* NOTE.—When indictment has already been found here insert the words "of whatsoever misdemeanors [*or* felonies *as the case may be*] whereof the said *A. B.* is before you indicted." When indictment has not been preferred, insert "which may be found against for any

of the offences for which he has been committed to take his trial at the next assizes [*or as the case may be*] to be holden in and for the county of ."

† NOTE.—*If indictment not found, insert* "after such Assizes [*or* Quarter Sessions of the Peace] as aforesaid."

Recognizance by the prosecutor [*or* defendant] in the sum , with two [*or as the case may be*] sureties in the sum of £ , each conditioned to

This writ was issued by, &c.

[NOTE.—This writ is issued under the provisions of 19 Vict. c. 16. As to the mode of application, see r. 42, *ante*, p. 24.]

No. 10.

Recognizance by Prosecutor on Certiorari to remove Indictment into Queen's Bench Division.

Be it remembered, that on the day of , 188 , before [*here insert name and description of judge or justice of the peace before whom acknowledged*] cometh *A. B.* [*name of Prosecutor*] of , the prosecutor of the indictment hereinafter mentioned, and *C. D.*, of [*merchant*], and *E. F.*, of [*farmer*] [*names and descriptions of two sureties*], and acknowledge themselves to owe to our Sovereign Lady the Queen the several sums following, that is to say:—The said prosecutor the sum of , and the said *C. D.* and the said *E. F.* the sum of pounds each of lawful money of Great Britain, to be levied upon their several goods and chattels, lands and tenements, to Her Majesty's use, upon condition that if the said prosecutor shall pay to the defendant in case he the said defendant shall be acquitted upon an indictment against him for certain misdemeanors [*or* felonies] removed into the Queen's Bench Division of Her Majesty's High Court of Justice, at the instance of the said prosecutor, his the said defendant's costs incurred subsequent to the removal of such indictment. then this recognizance to be void, or else to remain in full force.

Taken and acknowledged the day and year above mentioned.

Before me,

[NOTE.—See rr. 30, 31, and 32, *ante*, pp. 16—18.]

No. 11.

Recognizance by Defendant on Certiorari to remove Indictment into Queen's Bench Division.

Be it remembered, that on the day of , 188 , *A. B.*, of , in the county of , *C. D.*, of in the county of [*merchant*], and *E. F.*, of in the county of [*farmer*], come before me, *G. H.*, one of Her Majesty's Justices of , and acknowledge to owe our said Lady the Queen the several sums following, that is to say:—The said *A. B.* the sum of pounds, and the said *C. D.* and *E. F.* the sum of pounds each of lawful money of Great Britain to be levied upon their several goods and chattels, lands and tenements, to Her Majesty's use, upon condition that if the said *A. B.* shall appear forthwith in the Queen's Bench Division of Her Majesty's High Court of Justice, at the Royal Courts of Justice, London, and shall plead to all and singular indictments of whatsoever misdemeanors [*or* felonies] whereof he stands indicted and at his own proper costs and charges shall cause and procure the issue or issues that may be joined thereon

to be tried at the next assizes to be holden in and for the county of [*or* at the [present [*or* next] [*Hilary*]] sittings of the High Court of Justice for the county of Middlesex] if the said Queen's Bench Division shall not appoint any other time for the trial thereof, and if the said Queen's Bench Division shall appoint any other time, then at such other time, and shall give due notice of such trial to the prosecutor or his solicitor, and shall personally appear from day to day on the trial of the said indictment, and not depart until he shall be discharged by the Court before whom such trial shall be had; and shall appear from day to day on the return of the Postea in the said Queen's Bench Division, and not depart until discharged by such last mentioned Court. And in case he, the said *A. B.*, shall be convicted, he shall pay to the prosecutor his costs incurred subsequent to the removal of such indictment, then this recognizance to be void, or else to remain in full force.

Taken, &c.

[NOTE.—See rr. 30, 31, and 32, *ante*, pp. 16—18. In cases where the defendants are the inhabitants of a parish or county, or a company or other corporate body, the recognizance may be entered into by one of the inhabitants or one of the members of the company or other corporation, stating it to be on behalf of himself and the rest of the inhabitants, company, or other corporation, with two householders as sureties.]

No. 12.

Notice to Justices of Application for Certiorari to remove Order of Sessions on Appeal pursuant to Rule 33.

To *A. B.* and *C. D.*, Esquires, two of Her Majesty's Justices of the Peace in and for the county [city, *or* borough, &c.] of

Take notice that the Queen's Bench Division of Her Majesty's High Court of Justice at the Royal Courts of Justice, London, will be moved on the day of , or so soon after as counsel can be heard [*or, if in vacation*, that application will be made to a Judge in Chambers at the Royal Courts of Justice, London, on the day of at the hour of in the noon.] On behalf of [*the inhabitants of the parish of in the county of*] for a writ of Certiorari to remove into the said Court all and singular orders made by the keepers of the peace and justices in and for the county [city, *or* borough, &c.] of or some of them at a general sessions of the peace held at in and for the said county on or about the day of last, upon an appeal between [*the guardians of the poor of the union in the county of*], appellants, and [*the guardians of the poor of the union in the county of*], respondents, touching an original order of two justices for the removal of *E. F.* from the said parish of to the parish of in the said union [*or as the case may be*]. Upon the hearing of which said appeal the said original order was quashed [*or* affirmed].

Dated, &c.

(Signed)
of
Solicitors for the above-named inhabitants of the said parish of

[NOTE.—May be signed either by the party on whose behalf the application is to be made, or by his solicitor; but if by the solicitor, he must state that he is the solicitor for the applicant above named. See further r. 33 and note thereto, *ante*, p. 18.]

No. 13.

Notice to Justices of Application for Certiorari to remove Conviction, or Order of Justices pursuant to Rule 33.

To *A. B.* and *C. D.*, Esquires, two of Her Majesty's Justices of the Peace in and for the county [city, *or* borough] of

Take notice that the Queen's Bench Division of Her Majesty's High Court of Justice at the Royal Courts of Justice, London, will be moved on the day of , or so soon after as counsel can be heard [*or, if in vacation*, that application will be made to a Judge in Chambers at the Royal Courts of Justice, London, on the day of at the hour of in the noon], on behalf of *E. F.*, for a writ of Certiorari to remove into the said Court a certain record of conviction [*or* order], under the hands and seals of you the said *A. B.* and *C. D.*, as such justices as aforesaid, made on or about the day of , whereby the said *E. F.* was convicted of [*here describe the offence, or describe concisely the order intended to be removed*].

Dated, &c.

(Signed) *E. F.* [*or by his solicitor*, stating himself to be the solicitor for the above-named *E. F.*].

[NOTE.—See note to last form.]

No. 14.

Affidavit of Service of Notice of Application for Certiorari for Conviction; or Order of Justices; or Order of Sessions.

In the High Court of Justice,
Queen's Bench Division.

I, *G. H.*, of , clerk to , solicitor for *E. F.*, make oath and say :—

1. That I, , did, on the day of , serve *A. B.*, Esquire, one of Her Majesty's Justices of the Peace, in and for the county of , with the notice hereunto annexed, marked *A.*, by delivering a true copy of the said notice to the said *A. B.* at , in the said county [*or where the service is not personal, as follows*].

That I, , did, on the day of also serve *C. D.*, Esquire, one other of Her Majesty's Justices of the Peace, in and for the said county, with the said notice, by delivering a true copy of the said notice to and leaving the same with [*the wife, clerk, or servant*] of the said *C. D.*, at the house or residence of the said *C. D.*, situate at in the said county.

If Order of Sessions, add—

* 2. That the said *A. B.* and *C. D.* were present at the sessions of the peace in and for the said county when the appeal mentioned in the said notice was heard, and were and are two of Her Majesty's Justices of the Peace in and for the said county, by and before whom the Order of Sessions mentioned in the said notice was made.

* In the case of city or borough sessions held before the Recorder only, this paragraph not necessary.

Sworn, &c.

G. H.

Filed on behalf of

[NOTE.—See r. 33 and note thereto, *ante*, p. 18.]

No. 15.

Summons for Certiorari for Conviction, or Order of Justices, or Order of Sessions.

In the High Court of Justice,
Queen's Bench Division.
The Hon. Mr. Justice , Judge in Chambers.

Upon reading the several affidavits of *E. F.* and *G. H.*, and the exhibit* thereto annexed, filed the day of , 188 , and upon hearing counsel [*or* the solicitor] for the said *E. F.*—

It is ordered that all parties concerned attend the Judge in Chambers at the Royal Courts of Justice on the day of , 188 , at the hour of in the noon, upon the hearing of an application for a writ of Certiorari, to remove into this Court a certain record of conviction [*or* order] under the hands and seals of *A. B.* and *C. D.*, Esquires, two of Her Majesty's Justices of the Peace in and for the county of made on or about the day of , whereby *E. F.* was convicted of [*or* ordered to, &c. *Here describe shortly the offence or substance of the Order*].

[*If for Order of Sessions, say*, a certain Order of Sessions made upon a certain appeal between [*the Guardians of the Poor of the Poor Law Union*], appellants, and [*the Guardians of the Poor of Poor Law Union*], respondents, touching the last place of legal settlement of *I. K.*, a poor person chargeable to the said Union (*or otherwise shortly describe the appeal*)], on the grounds :—

[*If objection on account of any omission or mistake in drawing up of Order or judgment insert grounds.*]

At the instance of .

Dated, &c.

* A copy of the conviction or order should be exhibited.

[NOTE.—As to when application may be made at Chambers, see r. 28, *ante*, p. 13.]

No. 16.

Judge's Order for Certiorari for Conviction or Order of Justices, or Order of Sessions.

[*Heading as in No.* 15.]

Upon reading the affidavit of *L. M.*, filed the day of , 188 , and upon hearing counsel [*or* the solicitors] on both sides—

It is ordered that a writ of Certiorari issue to remove into this Court a certain [*as in the Summons No.* 15].

No. 17.

Certiorari to remove Conviction, Order of Justices, or Order of Sessions.

Victoria, by the Grace of God, &c., to the keepers of Our peace and Our justices assigned to hear and determine divers crimes, trespasses, and other offences committed within our county [*or* borough, *or other jurisdiction, as the case may be*] of and to every of them, greeting : We being willing for certain reasons that all and singular orders made by you or some of you [*or if order of justices, say* by *A. B.* and *C. D.*, Esquires, two of Our justices assigned as aforesaid (*or if conviction, say all and singular records of con-*

viction made, &c., whereby)]. [*Here shortly describe the substance of the order or offence, &c., to be removed*] (as is said), be sent by you before Us, do command you, and every of you, that you or one of you do send forthwith under your seals, or the seal of one of you, before Us, in the Queen's Bench Division of Our High Court of Justice, at the Royal Courts of Justice, London, all and singular the said orders, with all things touching the same, as fully and perfectly as they have been made by you, or some of you, and now remain in your custody or power, together with this Our writ, that We may cause further to be done thereon what of right and according to the law and custom of England We shall see fit to be done.

Witness, &c.

To be indorsed.

By Order of Court [*or* of Mr. Justice].
At the instance of the within-named Defendant [*or as the case may be*].
This writ was issued by, &c.

No. 18.

Recognizance to prosecute Certiorari for Conviction, Order of Justices, or Order of Sessions.

Be it remembered, that on the day of , 188 , *E. F.*, of , *N. O.*, of , and *P. Q.*, of , come before me, *R. S.*, Esquire, one of Her Majesty's Justices of the Peace in and for the county of , and acknowledge to owe to our Sovereign Lady the Queen the sum of fifty pounds of lawful money of Great Britain, to be levied upon their goods and chattels, lands and tenements, to Her Majesty's use, upon condition that if the said *E. F.* shall prosecute with effect, without any wilful or affected delay, at his own proper costs and charges, a writ of Certiorari issued out of the Queen's Bench Division of Her Majesty's High Court of Justice, to remove into the said Court all and singular orders [*or as the case may be. Insert description from Certiorari*] and shall pay to the prosecutors, within one month next after the said orders shall be confirmed in the said Court, all their full costs and charges, to be taxed according to the course of the said Court, then this recognizance to be void or else to remain in full force.

Taken and acknowledged the day
and year first aforesaid.
Before me,
[*Signed, &c.*]

[NOTE.—See rr. 38 and 39, *ante*, p. 23. This form is only applicable in a criminal case; if the case is stated in relation to a civil proceeding, the condition as to payment of costs in Form 19 should be substituted. For decisions as to whether proceedings are criminal or civil, see note to r. 216, *ante*, p. 86.

If the parties to give the recognizance are the inhabitants of a parish or county, or members of a company or other corporate or large body, see note to Form No. 11, *ante*, p. 170.]

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* This form must be varied according to circumstances.

*No. 19.

Recognizance on Special Case on Order of Sessions.

Be it remembered, that on the day of , 188 , *A. B.*, of the parish of , in the county of [*on behalf of himself and the rest of*

the inhabitants of the said parish, if the case be so], and *C. D.*, of , and *E. F.*, of [*here insert the names and additions of two householders for bail*], come before me, , one of Her Majesty's Justices of the Peace in and for the county of , and acknowledge to owe to our Sovereign Lady the Queen the sum of fifty pounds, to be levied upon their goods and chattels, lands and tenements, to Her Majesty's use, upon condition that if he, the said *A. B.* [*on behalf of himself and the rest of the inhabitants of the said parish of*], shall prosecute with effect, without any wilful or affected delay, at their own proper costs and charges, certain proceedings in the Queen's Bench Division of Her Majesty's High Court of Justice to quash all and singular orders made by the keepers of the peace and justices in and for the county of , between *A. B.*, appellant, and [*the Churchwardens and Overseers of the Poor of the parish of* , *and the Assessment Committee of Union*], respondents, touching [*a certain rate or assessment made for the relief of the poor of the said parish of* , *on the day of* , 188], and shall pay to the prosecutors within one month next after the said orders shall be confirmed in the said Court such costs, if any, as the said Court may order, to be taxed according to the course of the said Court, then this recognizance to be void, or else to remain in full force.

Taken, &c.

[NOTE.—See rr. 38 and 39, and note thereto, *ante*, p. 23. This form applies to civil proceedings. If the case is stated in relation to a criminal proceeding, Form No. 20 must be used.]

No. 20.

Recognizance on Special Case on Order of Sessions in Criminal Cases.

Be it remembered, that on the day of , 188 , *A. B.*, of , and *C. D.*, of , and *E. F.*, of , come before me, , one of Her Majesty's Justices of the Peace in and for the county of , and acknowledge to owe to our Sovereign Lady the Queen the sum of fifty pounds of lawful money of Great Britain to be levied upon their goods and chattels, lands and tenements, to Her Majesty's use, upon condition that if he, the said *A. B.*, shall prosecute with effect, without any wilful or affected delay, at his own proper costs and charges certain proceedings in the Queen's Bench Division of Her Majesty's High Court of Justice to quash all and singular orders made by the keepers of the peace and justices in and for the county of , upon the appeal of the said *A. B.* against a certain conviction against him for [*shortly describe offence*], and shall pay to the prosecutor within one month next after the said orders shall be confirmed in the said Court, all his full costs and charges, to be taxed according to the course of the said Court, then this recognizance to be void, or else remain in full force.

Taken, &c.

No. 21.

Return to Writ of Certiorari.

Indorse the writ thus :—

The execution of this writ appears by the schedules* hereunto annexed. The answer of *A. B.*, Esquire, one of the keepers of the peace and justices within mentioned.

To be signed and sealed by one of the Justices. (L. S.)

[NOTE.—If the writ was directed to the Judges of Assize, it is sufficient for the Clerk of Assize to affix a seal and state the return to be "the answer of Sir R. G., Knight, one of the Justices within-named."]

* The Schedules consist of the Indictment Orders and other documents to be returned.

No. 22.

Memorandum pursuant to Rule 37 *that Recognizance not required.*

The Court having ordered that the within-mentioned order be quashed when returned, no recognizance is required by the Crown Office Rules 1886.

(Signed) [by the Queen's Coroner and Attorney *or other proper officer.*]

[NOTE.—See r. 37, *ante*, p. 23.]

No. 23.

Attorney-General's Fiat for Application for Certiorari.

Let application be made to the Queen's Bench Division of Her Majesty's High Court of Justice [*or* to a Judge in Chambers] for a Writ of Certiorari, to be directed to to remove into the said division,* all and singular indictments of whatsoever misdemeanors [*or* felonies] whereof *A. B.* is [*or* may be] before them indicted.

Dated, &c.

(Signed)
R. WEBSTER
(Attorney-General).

* If for conviction or Order of Justices, or Order of Sessions, as in No. 16.

NOTE.—*The writ must be indorsed at the instance of Her Majesty's Attorney-General.*

No. 24.

Entry of Appearance to Indictment, &c.

In the High Court of Justice,
Queen's Bench Division.
[*Middlesex.*] The Queen
against
A. B.

Enter appearance for the above-named defendant, *A. B.*, to this indictment [*or* information].

Dated, &c.

(Signed) *C. D.* of *X.*, agent for *E. F.* of *Y.*, solicitor for above-named defendant.

[NOTE.—See r. 83, *ante*, p. 42.]

No. 25.

Notice of Motion to discharge Prisoner out of custody when Prosecutor has not proceeded within a month after Defendant's apprehension.

In the High Court of Justice,
Queen's Bench Division
[*Middlesex.*] The Queen
against
A. B.

Take notice that application will be made to this Court [*or* to a Judge in Chambers], at the expiration of eight days after service of this notice, or as soon after as counsel can be heard, that the above-named defendant be discharged out of custody upon his entering an appearance to the indictment in this prosecution, on the ground that the prosecutor has not proceeded as required by Rule 44 of the Crown Office Rules of 1886.

Dated, &c.

(Signed) *C. D.* of L., agent for *X. Y.*, of S., solicitor for above-named defendant.

To *W. G.*, the prosecutor, or
the solicitor
for the prosecutor.

[NOTE.—See r. 44, *ante*, p. 25.]

No. 26.

Notice of Motion for discharge of Prisoner out of custody after Conviction when Prosecutor has not proceeded to bring him up for sentence.

[*Heading as in No.* 25.]

Take notice that this Court will be moved at the expiration of eight days after service of this notice or so soon after as counsel can be heard that the above-named defendant be discharged out of custody upon giving his own recognizance, the prosecutor not having brought up the said defendant for sentence as required by Rule 45 of the Crown Office Rules, 1886.

Dated, &c.

[NOTE.—See r. 45, *ante*, p. 26.]

No. 27.

Recognizance to prosecute Information (Criminal).

Be it remembered, that on the day of 188 , before Frederick Cockburn, Esquire, Queen's coroner and attorney, in the Queen's Bench Division of Her Majesty's High Court of Justice, before the Queen herself, cometh *A. B.* (*the prosecutor*) of, &c., and acknowledges to owe to *C. D.* [*the defendant*] the sum of fifty pounds upon condition to prosecute with effect a certain information exhibited against the said *C. D.* by the said coroner and attorney, before the Queen herself, in the said Court for certain misdemeanors, and abide by and observe all such orders and things as the said Court shall direct in that behalf.

Taken, &c.

(Signed)
F. COCKBURN
(Queen's Coroner and Attorney).

[NOTE.—See r. 46, *ante*, p. 26. If not taken before the Queen's Coroner the recognizance may be acknowledged before a justice of the peace of a county or borough in which the office is usurped, in which case it must be varied accordingly.]

No. 28.

Recognizance to prosecute Information Quo Warranto.

[*Similar to No.* 27, *except that the information must be described as*] a certain information in the nature of a Quo Warranto exhibited against the said *C. D.* by the said Frederick Cockburn on the relation of the said *A. B.* in the said Court to show by what authority he claims to exercise the office of a [*member of the Local Board for the district of in the county of or as the case may be*] whereof he is impeached and to abide by and observe all such orders and things as the said Court shall direct in that behalf.

Taken, &c.

[NOTE.—See r. 46, *ante*, p. 26. If not taken before the Queen's Coroner the recognizance may be acknowledged before a Justice of the Peace of the county or place where the offence is alleged to have been committed, in which case it must be varied accordingly.]

No. 29.

Notice to a Justice of the Peace of intention to apply for a Criminal Information.

To *A. B.*, Esquire, one of Her Majesty's Justices assigned to hear and determine divers crimes, trespasses, and other offences committed within the county of .

Take notice, that the Queen's Bench Division of Her Majesty's High Court of Justice will be moved on the day of , or so soon after as counsel can be heard on behalf of *C. D.*, for an order to show cause why an information should not be exhibited against you for certain misdemeanors, in unlawfully, maliciously, and corruptly, and contrary to your duty as such justice of the peace [*here set out the nature of the offence*].

Dated, &c.

(Signed)
H. I.
Solicitor for the said *C. D.*

Notice to several Magistrates.

Commence as above, and continue, why one or more information or informations should not be exhibited against you or some or one of you, &c., as above.

[NOTE.—There must be six days' notice at least given of this application under Rule 47, *ante*, p. 27.

The notice may be signed either by the party at whose instance the application is to be made (being a party aggrieved) or by his solicitor stating himself to be solicitor for the said party.]

No. 30.

Information (Criminal).

Middlesex, to wit.

Be it remembered, that Frederick Cockburn, Esquire, coroner and attorney of our present Sovereign Lady the Queen, in the Queen's Bench Division of Her Majesty's High Court of Justice, before the Queen herself, who for our said Lady

the Queen in this behalf prosecutes in his own proper person, comes here into Court, before the Queen herself, at the Royal Courts of Justice, London, on [*the day the order was made absolute*]. And for our said Lady the Queen gives the Court here to understand and be informed, that [*state offence and then proceed in the same manner as if it were an indictment*].

Second Count.—And the said coroner and attorney of our said Lady the Queen, for our said Lady the Queen, further gives the Court here to understand and be informed that, &c.

(*To conclude.*)

Whereupon the said coroner and attorney for our said Lady the Queen prays the consideration of the Court here in the premises, and that due process of law may be awarded against him, the said *B. G.*, in this behalf to make him answer to our said Lady the Queen touching and concerning the premises aforesaid.

(Signed)
F. COCKBURN,
(Queen's Coroner and Attorney).

[NOTE.—See Recognizance, No. 27, which must be entered into before the information may be filed, r. 46, *ante*, p. 26.]

No. 31.

Information Ex Officio.

Information by the Attorney General or Solicitor General, ex officio.

In the same form, using the name of the Attorney General [or *Solicitor General*] *instead of the Queen's coroner and attorney, thus*—Sir Richard Webster, Knight, Attorney General [*or* Sir John Gorst, Knight, Solicitor General] of our present Sovereign Lady the Queen, who for our said Lady the Queen in this behalf prosecutes, whereupon, &c., the said Attorney General, &c., *as in the prayer.*

No. 32.

Information Quo Warranto against a Member of a School Board.

Cheshire, to wit.

Be it remembered, that Frederick Cockburn, Esquire, coroner and attorney of our present Sovereign Lady the Queen, in the Queen's Bench Division of Her Majesty's High Court of Justice before the Queen herself, who for our said Lady the Queen in this behalf prosecutes, in his own proper person comes here into Court before the Queen herself at the Royal Courts of Justice, London, on the day of , in the year of our Lord one thousand eight hundred and eighty-six *, and for our Lady the Queen at the relation of *A. B.* of , according to the form of the statute in such case made and provided, gives the Court here to understand and be informed that [*the parish of , in the county of , is a school district within the meaning of the Elementary Education Acts*, 1870 *and* 1873. *And that within the said parish and school district of , pursuant to the provisions of the said Acts, divers, to wit nine members* [*or as the case may be*] *are to be elected for and as the school board for the said parish and school district, in manner by the said Acts provided, and in accordance with the rules, orders, and regulations of the Lords of the Committee of the Privy Council on Education in that behalf dated* (*the third day of October one thousand eight*

* Date of order absolute.

hundred and seventy-three),] and that the place and office of [*member of the school board of the said parish and school district*] is a public office and place of great trust and pre-eminence within the said [*parish and school district*], touching the rule and government of the said [*school district*], that is to say, at the [*parish*] of aforesaid, in the county aforesaid. And that *C. D.*, of , in the said county [merchant, *or as the case may be*], heretofore, to wit on the day of , in the year of our Lord one thousand eight hundred and eighty-six, at the [*parish*] aforesaid in the county aforesaid, did use and exercise and from thence continually afterwards to the time of exhibiting this information has there used and exercised, and still does there use and exercise, without any legal warrant, authority, or right whatsoever, the office of [*member of the school board of the said parish and school district of*], in the county aforesaid, and for and during all the time last above-mentioned, has there claimed and still does claim to be a [*member of the said school board of the said parish and school district*], and to have, use, and exercise all the privileges and perform all the duties belonging and appertaining to the said office of [*member of the said school board*], which said offices, privileges, and duties he, the said *C. D.*, for and during all the time last above-mentioned, upon our said Lady the Queen without any legal warrant, authority, or right whatsoever has usurped, and still does usurp, that is to say, at the [*parish*] of , in the county aforesaid, in contempt of our said Lady the Queen, to the great damage and prejudice of her royal prerogative and against her Crown and dignity. Whereupon the said coroner and attorney of our said Lady the Queen for our said Lady the Queen prays the consideration of the Court here in the premises. And that due course of law may be awarded against him, the said *C. D.*, in this behalf to make him answer to our said Lady the Queen, and show by what authority he claims to have, use, and enjoy, and perform the office, liberties, privileges, and duties aforesaid.

(Signed)
F. COCKBURN.
(Queen's Coroner and Attorney.)

[NOTE.—See recognizance, No. 28, which must be entered into before the information may be filed, r. 46, *ante*, p. 26.]

No. 33.

Information Quo Warranto against Municipal Corporate Officers.

Borough of , to wit.

Be it remembered, that, &c. [*proceed as in No.* 32.]

That the borough [*or* city] of is a borough subject to the provisions of the Municipal Corporations Act, 1882 [*if subject to the provisions of any other Act it should be stated*], and that within the said borough [*or* city] pursuant to the provisions of the said Act there of right ought to be one mayor, [*six*] aldermen and [*eighteen*] councillors, to be elected in the manner in the said Act specified; and that the place and office of [mayor] [alderman] [*or* a councillor] of the said borough is a public office, and a place and office of great trust and pre-eminence within the said borough, touching the rule and government of the said borough [*and the administration of public justice within the same*], that is to say, at the borough of , in the said county. And that *C. D.*, of the borough aforesaid, in the county aforesaid, [merchant], heretofore, to wit, on the day of , in the year of our Lord

one thousand eight hundred and eighty-six, at the borough of aforesaid, in the county aforesaid, did use and exercise, and from thence continually afterwards to the time of exhibiting this information has there used and exercised, and still does there use and exercise, without any legal warrant, royal grant, or right whatsoever, the office of of the said borough, and for and during all the time last above mentioned had there claimed, and still does there claim, without any legal warrant, royal grant or right whatsoever, to be of the said borough, and to have, use, and enjoy all the liberties, privileges, and franchises, to the office of of the said borough, belonging and appertaining, which said office, liberties, privileges, and franchises, he the said *C. D.* for and during all the time last above-mentioned upon our said Lady the Queen, without any legal warrant, royal grant, or right whatsoever, has usurped and still does usurp, that is to say, at the borough of aforesaid in the county aforesaid, in contempt of our said Lady the Queen, to the great damage and prejudice of Her royal prerogative, and also against Her Crown and dignity. Whereupon the said coroner and attorney of our said Lady the Queen, for our said Lady the Queen, prays the consideration of the Court here in the premises. And that due process of law may be awarded against him the said *C. D.*, in this behalf to make him answer to our said Lady the Queen, and show by what authority he claims to have, use, and enjoy, the office, liberties, privileges, and franchises aforesaid.

(Signed)
F. COCKBURN,
(Queen's Coroner and Attorney).

No. 34.

Notice of Motion for an Information Quo Warranto for Corporate Office within 45 *&* 46 *Vict. c.* 50, *s.* 225.

In the High Court of Justice,
Queen's Bench Division.

Take notice that the Queen's Bench Division of Her Majesty's High Court of Justice will be moved on the day of , 188 , or so soon after as counsel can be heard, on behalf of *A. B.*, of , merchant [*or as the case may be*], that an information in the nature of a Quo Warranto be exhibited against you, *C. D.*, to show by what authority you claim to exercise the office or franchise of a of , on the ground :—That [*here shortly state the grounds of the application*].

And further take notice, that in support of this application will be read the affidavits of *E. E.* and another and *G. G.*, sworn respectively the day of May, 188 , and the exhibits therein referred to, copies of which are served herewith.

Dated, &c.

(Signed) *X. Y.*, of *Z.*, agent for *M. N.*, of *S.*, solicitor for the above-named *A. B.*

To *C. D.*, of T.

[NOTE.—See rr. 52, 53, 54, and 55, *ante*, pp. 30—32. The notice may be signed either by the party at whose instance the application is to be made or by his solicitor, stating himself to be solicitor for the said *A. B.*]

No. 35.

Disclaimer upon an Information Quo Warranto.

In the High Court of Justice,
Queen's Bench Division.

[*Lincolnshire.*]—The Queen on the relation of *A. B.*
against
C. D.

And now, that is to say, on the day of , 188 , comes the above-named *C. D.* by his solicitor [*or* in his own proper person], and says that he altogether disclaims and disavows the office, liberties, privileges, and franchises in the said information above specified, and cannot deny but that he has usurped upon our said Lady the Queen, without any legal warrant, royal grant or right whatsoever, the said office, liberties, privileges, and franchises in the said information above-mentioned, and confesses and acknowledges the said usurpation, in manner and form as in the said information is above alleged.

(Signed)
C. D.
[*or by his counsel*].

[NOTE.—See r. 59, *ante*, p. 33.]

No. 36.

Judgment of Ouster on Disclaimer to Quo Warranto.

[*Heading as in No.* 35.]

The day of , 188 .

The defendant having, on the day of , 188 , entered a disclaimer upon this information, it is this day adjudged that he, the said *C. D.*, do not in any manner intermeddle, &c. [*proceed as in form for judgment on Quo Warranto, form* 123, *post*, p. 218].

[NOTE.—See r. 59, *ante*, p. 33, and r. 134, *ante*, p. 57.]

No. 37.

Writ of Mandamus.

VICTORIA, by the Grace of God, &c.

To of , greeting.

Whereas by [*here recite Act of Parliament, or Charter, if the act required to be done is founded on either one or the other*]. And whereas We have been given to understand and are informed in the Queen's Bench Division of Our High Court of Justice before Us that [*insert necessary inducement and averments*]. And you the said were then and there required by [*insert demand*] but that you the said well knowing the premises, but not regarding your duty in that behalf then and there wholly neglected and refused to [*insert refusal*] nor have you or any of you at any time since in contempt of Us and to the great damage and grievance of , as We have been informed from their complaint made to Us. Whereupon We being willing that due and speedy justice should be done in the premises as it is reasonable, do command you the said and every of you firmly enjoining you that you [*insert command*], or that you show Us cause to the contrary thereof, lest by your default the same complaint should be repeated to

Us, and how you shall have executed this Our writ make known to Us in Our said Court at the Royal Courts of Justice, London, forthwith then returning to Us this Our said writ, and this you are not to omit.

Witness, &c.

To be indorsed.

By Order of Court [*or* of Mr. Justice].
At the instance of .
This writ was issued by, &c.

[NOTE.—A peremptory writ of mandamus must be in the same form, omitting the words "or that you show Us cause to the contrary thereof."]

No. 38.

Return to Writ of Mandamus.

The return may either be indorsed on the back of the original writ, or engrossed on a separate parchment schedule.

When indorsed on the back of the original writ.

The answer of [*the parties to whom the writ is directed*] to this writ. We, the, &c. [*the defendants*] to whom this writ is directed, do most humbly certify and return to our Sovereign Lady the Queen at the time and place in this writ mentioned, that we have, &c. [*when the return is an obedience to the writ, the words of the mandatory part of the writ should be recapitulated in the past instead of the future tense*]. As by the said writ we are commanded.

(*To be signed by the parties making the return, or a sufficient number to form a quorum, unless they be a corporate body, in which case it is sufficient to attach the corporate seal.*)

When the return is engrossed on a separate schedule.

Indorse the original writ [*or the copy served*] *thus:*

The return of to this writ [*or if the return is obedience, say, the execution of this writ*] appears in the schedule hereunto annexed.

The answer of .

[*To be signed or sealed as above.*]

[NOTE.—See r. 69, *ante*, p. 36.]

No. 39.

Writ of Prohibition.

VICTORIA, by the Grace of God, &c., to [*the keepers of Our peace and Our justices assigned to hear and determine divers crimes, trespasses, and other offences committed within Our county of*], greeting.

Whereas We have been given to understand that you the said [*justices have entered an appeal by A. B. against, &c.*] And that the said has no jurisdiction to hear and determine the said by reason that [*here state facts showing want of jurisdiction*].

We therefore hereby prohibit you from further proceeding in the said .

Witness, &c.

This writ was issued by, &c.

No. 40.

Certificate of Default to Appear, &c., according to Recognizance.

In the High Court of Justice,
Queen's Bench Division.

[*Devonshire.*] The Queen,
against
J. J.

I hereby certify that at the session of oyer and terminer and general gaol delivery [*or* at the general quarter sessions of the peace, *or as the case may be*] held at Exeter, in and for the county of Devon, on the day of , 1886, a bill of indictment was found by the Grand Jury against *J. J.* for [*here shortly describe the offence from indictment*] which said indictment was afterwards, at the instance of the said *J. J.* removed into this Court, and filed in the Crown Office of the said High Court on the day of , 1886, and that the said *J. J.* on the day of , 1886, entered into a recognizance with two sureties forthwith to appear and plead to the said indictment, but the said *J. J.* having neglected so to do, the said recognizance was on the day of , ordered to be estreated into the Exchequer. And I further certify that the said *J. J.* has not yet appeared or pleaded to the said indictment, nor is he now under any recognizance so to do.

Dated, &c.

(Signed)
F. COCKBURN,
(Queen's Coroner and Attorney)
[*or other proper officer of the Crown Office*].

[NOTE.—See r. 85, *ante*, p. 43.]

No. 41.

Certificate of Indictment found or Information filed in the Queen's Bench Division.

In the High Court of Justice,
Queen's Bench Division.

[*Middlesex.*] The Queen
v.
J. J.

I hereby certify that *J. J.* stands charged by indictment found [*or* information filed] against him in this division on the day of , 1886, with [*here shortly state the offence*] and that the said *J. J.* has not appeared or pleaded to the said indictment [*or* information] nor is he under any recognizance so to do.

Dated, &c.

(Signed)
F. COCKBURN,
(Queen's Coroner and Attorney)
[*or other proper officer of the Crown Office*].

[NOTE.—See r. 43, *ante*, p. 25, and r. 86, *ante*, p. 43.]

No. 42.

Certificate of Indictment found at the Assizes or Quarter Sessions, &c., and removed into the Queen's Bench Division.

In the High Court of Justice,
Queen's Bench Division.

[*Devonshire.*] The Queen
against
J. J.

I hereby certify that at the session of oyer and terminer and general gaol delivery [*or* at the general quarter sessions of the peace] held at Exeter in and for the county of Devon on the day of , 1886, a bill of indictment was found by the Grand Jury against *J. J.* for that [*here shortly describe offence as in indictment*], which said indictment was afterwards, at the instance of [*state at whose instance*], removed into the Queen's Bench Division of Her Majesty's High Court of Justice and filed in the said Court on the day of , 1886, and that the said *J. J.* has not appeared or pleaded to the said indictment, nor is he under any recognizance so to do.

Dated, &c.

(Signed)
F. COCKBURN,
(Queen's Coroner and Attorney)
[*or other proper officer of the Crown Office*].

[NOTE.—See r. 86, *ante*, p. 43.]

No. 43.

Warrant of Arrest.

In the High Court of Justice,
Queen's Bench Division.

England, to wit. Whereas it is certified to me by the proper officer in that behalf that [*as in certificate No.* 40, 41, or 42].

These are, therefore, to command you forthwith to apprehend the said *A. B.*, and to bring him before me or some other Judge of the High Court, or before some one or more of the justices of the peace in and for the said [*county*] of , to be dealt with according to law.

Dated, &c.

(Signed)
COLERIDGE,
(Lord Chief Justice of England).

To Mr. [*Lewis*] Tipstaff of the Queen's Bench Division of the High Court of Justice, and to all constables and other peace officers whom it may concern.

[NOTE.—See r. 43, *ante*, p. 25, and r. 87, *ante*, p. 44.]

No. 44.

Warrant to Admit to Bail on Indictment found in Queen's Bench Division.

In the High Court of Justice,
Queen's Bench Division.

England to wit. Whereas it is certified to me by the proper officer in that behalf that [*as in certificate No.* 41].

These are, therefore, to command you forthwith to apprehend the said *A. B.*, and to bring him before me or some other Judge of the High Court of Justice in chambers at the Royal Courts of Justice, London, or before one or more justice or justices of the peace near to the place where he shall be taken, to the end that he may find sufficient sureties for his immediate appearance in this Court, and forthwith to plead to the said indictment, "*and to try the same at the then* [*or* next] *sittings of the said Court*," and personally to appear in the said Court on the trial of the said indictment [*or* information], and also upon the return of the postea, if he shall be convicted, and be further dealt with according to law.

Dated, &c.

(Signed)
COLERIDGE,
(Lord Chief Justice of England).

NOTE.—*This Warrant may also be used in the case of an indictment removed into the Court by certiorari against any defendants, not parties to the removal and not under recognizance, to answer in this Court, by omitting the words "and to try the same at the then* [*or next*] *sittings of the said Court.*"

[NOTE.—See r. 43, *ante*, p. 25, and r. 87, *ante*, p. 44.]

No. 45.

Warrant of Committal.

In the High Court of Justice,
Queen's Bench Division.

Whereas by my warrant [*or* the warrant of the Honourable Mr. Justice] dated the day of 1886, after reciting that it had been certified to me [*or* him] that [*as in the certificate*], I [*or* he] commanded the tipstaff of this Court, and all constables and other peace officers whom it might concern, forthwith to apprehend the said *A. B.* and bring him before me [*or* the said judge] or some other judge of the High Court, or before some one or more justices of the peace in and for the county of to be dealt with according to law.

And whereas the said *A. B.* has been apprehended under and by virtue of the said warrant, and being now brought before me [*if before a justice of the peace add* one of Her Majesty's Justices of the Peace in and for the county of], it is hereupon duly proved to me upon oath, that the said *A. B.* is the same person who is named and charged in and by the said indictment: These are therefore to command you to whom this warrant is addressed, forthwith to take and lodge the said *A. B.* in the prison at *F.* in the county of , together with this warrant, there to be imprisoned by the gaoler of the said prison until he shall be discharged by due course of law.

Dated, &c.

(Signed)
COLERIDGE,
(Lord Chief Justice of England),
[*or*, if by a justice of the peace, to be signed and sealed].

To

[NOTE.—See r. 88, *ante*, p. 44.]

No. 46.

Notice to Defendant to appear to Information in pursuance of undertaking in enlarged Order.

(*Copy the enlarged Order containing the undertaking to appear, and write the following notice at the foot.*)

In the High Court of Justice,
Queen's Bench Division.

[*Somersetshire.*] The Queen
v.
B. R.

Take notice, that in pursuance of the above Order, an information has been filed in the Queen's Bench Division of Her Majesty's High Court of Justice against the above-named Defendant for certain misdemeanors. And that he is hereby required to cause an appearance to be entered in the said Court thereto immediately in pursuance of his undertaking contained in the above Order. And in default thereof the said Court will be moved on the day of or so soon after as counsel can be heard, that the Prosecutor be at liberty to enter an appearance thereto for the said Defendant, and to sign judgment against him [*or* that an attachment may issue against him for his contempt in not performing his said undertaking].

Dated, &c.

(Signed)
M. N., of *L.*, agent for *G. H.*, of *Y.*, solicitor for the Prosecution.

To *B. R.* the above-named Defendant,
and to , his solicitor or agent.

If it is intended to apply for an attachment, this notice must be served personally.

[NOTE.—See r. 90, *ante*, p. 44.]

No. 47.

Notice of Bail to avoid Arrest.

[*Heading as in No.* 46.]

Take notice that the above-named Defendant will appear before a Judge in Chambers at the Royal Courts of Justice, London [*or* before a justice of the peace in and for the county of at], on the day of 1886, at the hour of in the noon, and will then enter into his own recognizance, and put in bail to appear in this Court on the day of 188 , to the indictment found against him in this prosecution for certain misdemeanors, and to plead thereto *and try the same at the present* [or *next*] [*Trinity*] *sittings of the High Court* [*omit words in italics if indictment not found in this Court*], and personally to appear at the trial of the said indictment [*or* information], and on the return of the postea, if it be necessary, and so from day to day, and not to depart without leave of the Court. And the names and descriptions of such bail are *A. B.* of, &c. and *C. D.*, of, &c.

Dated, &c.

(Signed)
M. N., of *T.*, agent for *X. Y.*, of *S.*, solicitor for the above-named Defendant.

To *C. D.*, the Prosecutor, or
to Mr. *F.*, the solicitor or
agent for the Prosecutor.

This notice is not required on obtaining a certiorari to remove an indictment, or on certiorari for conviction or Orders, unless ordered by the Court or Judge on granting the certiorari.

[NOTE.—See r. 91, *ante*, p. 45.]

No. 48.

Recognizance to answer Indictment, or Information.

Be it remembered, that on the day of , 188 , *A. B.*, *C. D.*, and *E. F.*, come before me, *G. H.*, Esquire, one of Her Majesty's Justices of the Peace for the county of , and acknowledge to owe our Sovereign Lady the Queen the several sums following (that is to say):—The said *A. B.* the sum of pounds, the said *C. D.* and the said *E. F.* the sum of pounds each of lawful money of Great Britain, to be levied upon their several goods and chattels, lands and tenements, to Her Majesty's use, upon condition that if the said *A. B.* shall appear in the Queen's Bench Division of Her Majesty's High Court of Justice, at the Royal Courts of Justice, London, forthwith, and answer an indictment [*or* information] against him for certain [misdemeanors] according to the course of the said Court, *and try the same at the present* [or *next*] *sittings of the said Court* [*omit words in italics if indictment found elsewhere than in this Court*], or so soon after as the case can be heard, and shall personally appear from day to day on the trial of the said indictment, and not depart until he shall be discharged by the Court before whom such trial shall be had, and shall appear from day to day on the return of the postea in the said Court, if it be necessary, and not depart until discharged by such last-mentioned Court, then this recognizance to be void or else to remain in full force.

Taken, &c.

[NOTE.—This form is applicable in the case of a defendant to an indictment found in, or an information (criminal or ex officio) filed in, the Queen's Bench Division, or when an indictment has been removed into the Court at the instance of the prosecutor or some other defendant, but is not applicable to a defendant at whose instance a writ of certiorari has been awarded.]

No. 49.

Notice to be indorsed on Copy Indictment, or Information, to be served on a Defendant in Prison for want of Bail to Answer.

In the High Court of Justice,
Queen's Bench Division.

[*Devonshire.*] The Queen
against
J. J.

Take notice, that unless you shall, within the space of eight days next after the delivery hereof, cause an appearance, and also a plea or demurrer to be entered in this Court to the within information [*or* indictment], an appearance, and a plea of Not Guilty will be entered thereto, in your name, pursuant to the Rule in that case made and provided, and that the issue to be joined thereon will be tried at the next Assizes to be holden in and for the county of , [*or* at the present] [*or* next] [*Hilary*] sittings of the High Court of Justice.

Dated, &c.

(Signed) *M. N.*, of *L.*, agent for *X. Y.*, of *S.*, solicitor for the Prosecution.

To , the above-named Defendant.

[NOTE.—See r. 93, *ante*, p. 45.]

No. 50.

Affidavit of Service of Copy Information, or Indictment, with Notice indorsed on Defendant in Gaol.

[*Heading as in No.* 49.]

I, *A. B.*, of, &c., make oath and say,—

That I did on the day of , 188 , deliver to the above-named Defendant, then a prisoner in Her Majesty's prison at , in and for the county of , at the said prison, a copy of the paper writing hereunto annexed marked with the letter [*annex a copy of the information and notice indorsed*], and of the indorsement thereon.

Sworn, &c.

[NOTE.—See r. 93, *ante*, p. 45.]

No. 51.

Writ of Subpœna, to answer on Information.

VICTORIA, by the Grace of God, &c., to *A. B.*: We command you that, laying aside all pretences and excuses whatsoever, you be and appear in the Queen's Bench Division of Our High Court of Justice before Us at the Royal Courts of Justice, London, on the day of , 188 , to answer to Us of and concerning such matters and things as shall then and there be objected against you on Our behalf, and, further, to do and receive all and singular such matters and things as Our said Court shall then and there consider of concerning you in this behalf. And this you are not to omit under the penalty of one hundred pounds, to be levied upon your goods and chattels, lands and tenements, if you shall make default in the premises.

Witness, &c.

Indorsement when on Criminal or Ex-Officio Information.

Frederick Cockburn, Esquire, Queen's Coroner and Attorney in the Queen's Bench Division of Her Majesty's High Court of Justice, before the Queen herself [*or, if ex officio*, Sir Richard Webster, Knight, Attorney-General of our Lady the Queen], for our said Lady the Queen, prosecutes this writ against the within-named *A. B.*, upon an information exhibited against him by the said Frederick Cockburn [*or* Sir Richard Webster] in the said Court for certain misdemeanors whereof he is impeached.

When on Quo Warranto.

Frederick Cockburn, Esquire, Queen's Coroner and Attorney, &c., prosecutes this writ against the within-named *A. B.* upon an information in the nature of a quo warranto, on the relation of *C. D.* exhibited against the said *A. B.* by the said Frederick Cockburn in the said Court to show by what authority he claims to be [*a member of the local board for the district of , or as the case may be*], whereof he is impeached.

This writ was issued by, &c.

[NOTE.—As to when this writ may be issued, see r. 94, *ante*, p. 46; and as to the teste and return, r. 234, *ante*, p. 107.]

No. 52.

Writ of Venire Facias, to answer.

VICTORIA, by the Grace of God, &c., to the Sheriff of Lancashire, greeting: We command you that you cause to come before Us, in the Queen's Bench Division of Our High Court of Justice, at the Royal Courts of Justice, London, on the day of , 188 , *A. B.*, to answer to Us for certain misdemeanors whereof he is indicted, and have you then there this writ.

Witness, &c.

This writ was issued by, &c.

[NOTE.—See note to last form, and as to corporate bodies, r. 98, *ante*, p. 47. This writ issues to cause an appearance to be entered in cases where the defendant is not under any recognizance to appear; mostly on indictments removed by the prosecutor and (for instance) against inhabitants and corporate bodies.

Four defendants may be included in one writ.]

No. 53.

Affidavit of Service of Subpœna to answer to an Information.

In the High Court of Justice,
Queen's Bench Division.

[*Middlesex.*]—The Queen
against
A. B.

I, *C. D.*, of, &c., make oath and say:

That I did on the day of , 188 , serve *A. B.*, the above-named Defendant, with the writ of *Subpœna* to answer in this prosecution hereunto annexed, and of the indorsement thereon, by delivering a true copy of the said writ and indorsement thereon to, and leaving the same with [a servant of the said] *A. B.*, at the house or residence [*or* office] of the said *A. B.*, situate at , in the county of . And at the same time showing to the said [*servant* of the said] *A. B.* the said original writ of *Subpœna;* and which said writ appeared to this Deponent to be duly and regularly issued out of and under the seal of this honourable Court.

Sworn, &c.

(Signed) *C. D.*

Filed on behalf of the Prosecutor [*or* Relator].

In cases against the Printers and Publishers of Newspapers,

Say [*as above*], by delivering a true copy of the said writ of *Subpœna* and indorsement thereon, to, and leaving the same with, a clerk or servant of the said Defendants, at the office of the said Defendants, called or known as the office of the newspaper, situate at , in the county of . And at the same time, &c. [*as above*].

[NOTE.—See r. 95, *ante*, p. 46.]

No. 54.

Writ of Attachment to answer an Information.

VICTORIA, by the Grace of God, &c., to the Sheriff of , greeting: We command you that you attach *A. B.*, if he shall be found in your bailiwick,

and him safely keep, so that you may have his body before Us in the Queen's Bench Division of Our High Court of Justice, at the Royal Courts of Justice, London, on the day of , to answer to Us for certain misdemeanors whereof he is impeached, and that you have then there this writ. Witness, &c.

[NOTE.—See r. 95, *ante*, p. 46.]

No. 55.

Writ of Attachment to answer Information Quo Warranto.

[*Same as No.* 54.]

[*Except that instead of the words "to answer to Us for certain misdemeanors, &c.," say :—*]

to answer to Us upon an information in the nature of a Quo Warranto exhibited against him by Frederick Cockburn, Esquire, Our coroner and attorney in the Queen's Bench Division of Our High Court of Justice, to show by what authority he claims to be, &c.

This writ was issued by, &c.

[NOTE.—See last form and note thereto.]

No. 56.

Writ of Distringas, to answer.

VICTORIA, by the Grace of God, &c., to the sheriff of greeting: We command you that you distrain *A. B.* by all his lands and chattels in your bailiwick, so that neither he nor any one for him do put his hands to the same, until you shall have another command from us for that purpose. And that you answer to us for the issues thereof, so that you may have him before Us in the Queen's Bench Division of Our High Court of Justice at the Royal Courts of Justice, London, on the day of , 188 , to answer to Us for certain whereof he is indicted [*or* impeached], and to hear his judgment for his many defaults, and have you then there this writ.

Witness, &c.

[NOTE.—See r. 98, *ante*, p. 47, and r. 100, *ante*, p. 48. The writ must not issue until four days after the return of a writ of *venire facias* or other previous process and default made thereon. It must be tested on the return day of the previous process. See r. 234, *ante*, p. 107.]

No. 57.

Writ of Capias to answer to Indictment, or Information.

VICTORIA, by the Grace of God, &c., to the sheriff of greeting: We command you that you take *A. B.*, if he shall be found in your bailiwick, and him safely keep, so that you may have his body before Us in the Queen's Bench Division of Our High Court of Justice at the Royal Courts of Justice, London, on the day of , 188 , to answer to Us for certain misdemeanors [*or* felonies] whereof he is indicted [*or* impeached]. And have you then there this writ. Witness, &c.

[*For writ of capias ad satisfaciendum after judgment, see No.* 144, *post*, p. 228.]

[NOTE.—There must be eight days at least between the teste and return. See r. 234, *ante*, p. 107.

In misdemeanor the writ must not issue till the end of four days [exclusive

of the return day] after the return of the *venire* or *distringas* and a *non est inventus* and *nil habeat* returned. See r. 100, *ante*, p. 48.

In felony, if the defendant is not under bail, the writ may issue in the first instance without previous process. See r. 97, *ante*, p. 47.

To proceed to outlawry before judgment there must be three writs of *capias* before the *capias cum proc.* and *exigent*; and although r. 100 provides that they may be made returnable as the writ of *venire*, inasmuch as under the old procedure it was necessary to teste the writs in Term, and make them returnable in the following Term, it may still be advisable by analogy, to teste the writs in the Sittings, and make them returnable in the following Sittings.]

No. 58.

Writ of Capias cum Proclamatione.

VICTORIA, by the Grace of God, &c., to the sheriff of , greeting: Whereas by our Writ of Exigent, having the same day of teste and return as this Our Writ of Proclamation, We have commanded you that you cause to be exacted [*or, if in London*, demanded] *A. B.*, from County Court to County Court [*or, if in London*, from hustings to hustings] until he shall be outlawed, according to the law and custom of England, if he shall not appear. And if he shall appear, that then you take him, and him safely keep, so that you may have his body before Us in the Queen's Bench Division of Our High Court of Justice at the Royal Courts of Justice, London, on the day of , 188 , to answer to Us for certain whereof he is indicted (*as in the Exigent*). We therefore command you that you cause three proclamations to be made according to the rule in that case made and provided, in the form following, that is to say, one of the same proclamations in the open County Court of and in your county, and one other of the same proclamations to be made at the general quarter sessions of the peace in those parts where the said *A. B.*, at the time of the said exigent awarded, was dwelling, and one other of the same proclamations to be made one month at least before the fifth time exacted by virtue of the said Writ of Exigent, at or near to the most usual door of the church or chapel of that town or parish where the said *A. B.* was dwelling at the time of the said exigent so awarded. And if the said *A. B.* was dwelling out of any parish, then in such place as aforesaid of the parish in your county next adjoining to the place of the dwelling of the said *A. B.*, and upon a Sunday immediately after divine service and sermon, if any sermon there be. And if no sermon there be, then forthwith immediately after divine service, that he, the said *A. B.*, render himself unto you before or at the time when he shall be the fifth time exacted by virtue of the said Writ of Exigent. So that you may have his body before Us in the said Queen's Bench Division on the day of , 188 , to answer to Us for the aforesaid, whereof he is indicted. And have you then there this writ. Witness, &c.

[*To have the same teste and return as the Exigent No.* 59.]

[NOTE.—See note to last rule. It must be tested on the return day of the previous process. See r. 104, *ante*, p. 49.]

No. 59.

Writ of Exigent before Conviction.

VICTORIA, by the Grace of God, &c., to the sheriff of greeting: We command you that you cause to be exacted *A. B.*, from County Court to County Court, until he shall be outlawed, according to the law and custom of England, if he shall not appear. And if he shall appear, that then you take

him, and him safely keep, so that you may have his body before Us in the Queen's Bench Division of Our High Court of Justice, at the Royal Courts of Justice, London, on the day of 188 , to answer to Us for certain whereof he is indicted, and whereupon you have before returned unto Us that the said *A. B.* was not found in your bailiwick. And have you then there this writ. Witness, &c.

If in London.—Instead of "exacted," say "demanded," and instead of "from County Court to Court," say "from husting to husting."

If against a woman.—Say "waived" instead of "outlawed."

If against a man and woman.—Say "outlawed and waived."

[NOTE.—See r. 103, *ante*, p. 49. Should there not be time for holding five County Courts or Hustings, allowed between the teste and return, the Writ. No. 61. must be issued after the return to this writ, to complete the same.

It may be advisable to be careful that no Sittings intervenes, and that the process be returnable from Sittings to Sittings; but the writ may be tested on the first day of a Sittings, and made returnable on the first or last day of the next ensuing Sittings.]

No. 60.

Writ of Capias cum Proclamatione into a Foreign County.

VICTORIA, by the Grace of God, &c., to the sheriff of greeting: We command you that you take *A. B.*, if he shall be found in your bailiwick, and him safely keep, so that you may have his body before Us in the Queen's Bench Division of Our High Court of Justice, at the Royal Courts of Justice, London, on [*three or four months between teste and return, as the case may be*], the day of next, to answer to Us for certain [misdemeanors] whereof he is indicted; and if you cannot find the said *A. B.* in your bailiwick, that then you make public proclamation in two County Courts of your county before the return of this writ, that he be before Us at the aforesaid day to answer to Us concerning the premises according to the rule in that case made and provided, and have you then there this writ. Witness, &c.

This writ was issued by, &c.

[NOTE.—See r. 102, *ante*, p. 48.]

No. 61.

Writ of Exigent with Allocatur.

VICTORIA, by the Grace of God, &c., to the sheriff of greeting: We command you that allowing the County Courts at which was exacted and did not appear as you returned to Us on the day of last, you cause him to be further exacted at your next County Court, and so from County Court to County Court, until he shall be outlawed, according to the law and custom of England if he shall not appear. And if he shall appear, that then you take him and him safely keep, so that you may have his body before Us in the Queen's Bench Division of Our High Court of Justice at the Royal Courts of Justice, London, on the day of 188 , to satisfy Us concerning his redemption by reason of certain whereof he is indicted, and thereupon by his own confession [*or* by a jury of the country], he stands convicted as in Our Court before Us it appears upon record [*or* to answer to us for certain whereof he is indicted]. And where-

upon you have before returned unto Us that the said was not found in your bailiwick, and have you then there this writ. Witness, &c.

In London.—Say "hustings" instead of "County Court," and "demanded" instead of "exacted."

[*To be tested on the day of the return of the previous writ, and made returnable on the first or last day of the following sittings.*

Alias writs of Allocatur Exigent to issue if necessary, to make up the quinto exact, i.e., until the Defendant has been exacted at five County Courts.]

[NOTE.—See r. 105, *ante*, p. 49.]

No. 62.

Writ of Capias Utlagatum.

VICTORIA, by the Grace of God, &c., to the sheriff of greeting: We command you that you take *A. B.*, if he shall be found in your bailiwick, and him safely keep, so that you may have his body before Us, in the Queen's Bench Division of Our High Court of Justice, at the Royal Courts of Justice, London, on the day of 188 , to stand right in Our Court, before Us, upon a certain outlawry against him, at Our suit, for certain whereof he is indicted, &c., and thereupon he is declared outlawed in your county, and have you then there this writ. Witness, &c.

[NOTE.—See r. 108, *ante*, p. 50.]

No. 63.

Writ of Capias Utlagatum, Special, cum breve de Inquirendo.

[*Same as No.* 62.]

[*And after the words "declared outlawed in your county," add:*—]

We also command you that you diligently inquire by the oath of good and lawful men of your bailiwick, what goods and chattels, lands and tenements' the said *A. B.* had on the said day of 188 [*the date of Capias Utlagatum*], in your said bailiwick; and those goods and chattels, lands and tenements, into whose hands soever they may have come, in your bailiwick, you cause to be taken, seized into Our hands, and appraised according to the full value thereof, to Our use, so that you may certify, at the aforesaid time, the true value of the same goods and chattels, lands and tenements, under their seals, or the seal of some of them, by whose oath the inquisition aforesaid shall be taken, then returning to Us this Our writ. Witness, &c.

[NOTE.—See r. 108, *ante*, p. 50.]

No. 64.

Writ of Melius Inquirendum.

VICTORIA, by the Grace of God, &c., to the sheriff of greeting: We command you that you again and more diligently inquire, &c. [*continue as in Form* 63.]

[NOTE.—See r. 108, *ante*, p. 50.]

No. 65.

Writ of Exigent after Judgment.

[*Same as No.* 59.]

[*Except instead of "to answer" say:*—]

To satisfy Us concerning his redemption by reason of certain whereof he is indicted, and thereupon by a jury of the country [*or by his own confession or default*], he stands convicted. As in Our Court before Us it appears upon record. And whereupon, &c. [*as in No.* 59].

No. 66.

Writ of Error to reverse Outlawry.

VICTORIA, by the grace of God, &c.:

To Our right trusty and well-beloved John Duke, Baron Coleridge, Our Chief Justice of England, President of the Queen's Bench Division of Our High Court of Justice and Our other Justices of our High Court attached to the said Queen's Bench Division of Our said High Court, greeting: Forasmuch as in the record and process, as also in the publication of an outlawry against *J. W.* on a certain indictment [*or* information] against the said *J. W.* for [*here shortly state nature of offence*], whereof the said *J. W.* is indicted [*or* impeached], and thereupon by a jury of the country is convicted, as it is said, manifest error hath intervened, to the great damage of the said *J. W.*, as by his complaint We are informed. We being willing that the said error (if any there be) be duly amended, and full and speedy justice done to the said *J. W.* in this behalf, do command you, that if the said outlawry be returned before Us, as has been said: then inspecting the said record and process, you cause further to be done therein for annulling the said outlawry as of right and according to the law and custom of England shall be meet to be done. Witness Ourself at Westminster, the day of in the forty-eighth year of Our reign.

(Signed)
ESHER,
(Master of the Rolls).

For indorsement, see No. 125, *post*, p. 218.

No. 67.

Assignment of Error upon Judgment in Outlawry.

In the High Court of Justice,
Queen's Bench Division.

Middlesex.—*J. W.*, Plaintiff in error.
against
The Queen, Defendant in error.

And hereupon the said *J. W.* [*or* by *A. B.* his solicitor] comes in his proper person, and says, that in the record and process, and also in the publication of the aforesaid outlawry, there is manifest error in this that there is no sufficient information [*or* indictment] exhibited [*or* filed] against the said *J. W.* whereon to ground the process of the outlawry aforesaid. By reason whereof, the said outlawry is void, and of no effect or force whatever.

There is also error in this [*here set out any other errors there may be*]. Therefore in that there is manifest error.

Wherefore the said *J. W.* prays that the outlawry aforesaid for the errors

aforesaid, and other errors appearing in the record and process aforesaid, may be reversed, and held for nothing; and that he may be restored to the common law, and to all which he has lost by occasion of the outlawry aforesaid.

Dated, &c.

(Signed)

[NOTE.—The assignment must be signed by counsel or by the plaintiff in error if he proceeds in person.]

No. 68.

Joinder in Error upon Judgment in Outlawry.

[*Heading as in No.* 67.]

And Sir R. W. Knight, now Attorney General of our present Sovereign Lady the Queen [*or* Frederick Cockburn, Esq., coroner and attorney of our Lady the Queen] present here in Court in his proper person, having heard the matters aforesaid above assigned for error for our said Lady the Queen, says that neither in the record and process aforesaid, nor in the publication of the aforesaid outlawry, is there any error; and he prays that the Queen's Bench Division of Her Majesty's High Court of Justice, now here may proceed to the examination as well of the record and process aforesaid as of the matters aforesaid above assigned for error, and that the outlawry aforesaid may in all things be affirmed.

BAIL.

No. 69.

Writ of Habeas Corpus to bring up Prisoner to be bailed.

VICTORIA, by the Grace of God, &c., to , greeting:

We command you that you have in the Queen's Bench Division of Our High Court of Justice [*or* before a Judge in Chambers], at the Royal Courts of Justice, London, immediately after the receipt of this Our writ, the body of *A. B.* being taken and detained under your custody as is said, together with the day and cause of his being taken and detained, by whatsoever name he may be called, to undergo and receive all and singular such matters and things as Our said Court [*or* Judge] shall then and there consider of concerning him in this behalf; and have you there then this Our writ.

Witness, &c.

To be indorsed.

By order of Court [*or* of Mr. Justice].

This writ was issued by, &c.

No. 70.

Summons to Admit to Bail on a Criminal Charge.

In the High Court of Justice,
Queen's Bench Division.
The Honourable Mr. Justice in Chambers.
[*If indictment or information found in this Court insert title.*]
Upon reading the affidavit of , &c., filed the day of 188 , and upon hearing counsel [or the solicitor for] *A. B.* It is ordered that all parties concerned attend the Judge in Chambers on the day of , 188 , at the hour of in the noon, on the hearing of an application on behalf of the said *A. B.* to be admitted to bail.
Dated, &c.

Notice.—To be served upon the committing magistrates or coroner and prosecutor, or in case of murder or manslaughter on the widow or next of kin of the deceased, or as the Judge may direct.

[NOTE.—See r. 122, *ante*, p. 53.]

No. 71.

Order to admit Prisoner to Bail.

In the High Court of Justice,
Queen's Bench Division.
The Honourable Mr. Justice in Chambers.
[*If indictment or information in this Court insert title.*]
Upon reading the affidavit of filed the day of 188 , and upon hearing counsel [*or* the solicitor] for .
It is ordered that upon *A. B.* giving security by his own recognizance in the sum of with [*two*] sufficient sureties in the sum of each before one of Her Majesty's Justices of the peace in and for the county of [*or* before a Judge in Chambers] for the personal appearance of the said *A. B.* at the next assizes and general session of oyer and terminer [*and general gaol delivery*] [*or* the next general quarter sessions of the peace] to be holden in and for the said county of then and there to answer to all such matters and things as, on her Majesty's behalf, shall be objected against him, he the said *A. B.* be discharged out of the custody of the Governor of Her Majesty's prison at in the said county as to his commitment for [*here shortly state the offence as in commitment*].
Dated, &c.
(*Twenty-four hours' notice of the names and descriptions of the proposed sureties must be given to the Prosecutor unless the Judge order otherwise.*)

No. 72.

Affidavit of Service of Summons, to admit to Bail, on the Committing Magistrates and Next of Kin of Deceased, or the Prosecutor.

In the High Court of Justice,
Queen's Bench Division.
[*If indictment or information in this Court insert name of cause, not otherwise.*]
I, *A. B.*, of, &c., clerk to *C. D.*, of , solicitor for [*insert name of prisoner*], make oath and say—

1. That I did on the day of 188 , serve *I. J.*, Esquire, one of the committing justices mentioned in the summons hereunto annexed with the said summons, by delivering a true copy of the said summons to a servant of the said *I. J.*, at the house of the said *I. J.*, situate at in the said county.

2. That I did on the day of also serve *K. L.*, Esquire, the other committing justice also mentioned in the said summons, by delivering a true copy of the said summons to a servant of the said *K. L.* at the house of the said *K. L.* situate at in the said county of .

3. That I did on the day of 188 , also serve *E. F.*, gentleman, one of the coroners of and for the county of , also named in the said summons, with the said summons, by delivering a true copy of the said summons to a clerk [*or* servant] of the said *E. F.*, at the office [*or* house] of the said *E. F.*, situate at in the said county.

4. That I did on the day of also serve *G. H.* [*the widow or the next of kin of deceased, or the prosecutor*] mentioned in the said summons with the said summons by delivering a true copy of the said summons to the said [*the widow or next of kin or prosecutor*] at in the county of .

Sworn, &c.

No. 73.

Notice of Bail upon Order of Judge, without Habeas Corpus.

Whereas the Honourable Mr. Justice has made an order bearing date the day of 188 , that [*recite the order, see No.* 71].

Now take notice that in pursuance of the said order the said and [*four*] sufficient sureties will enter into such recognizance as aforesaid before [*as in the order*] at on the day of at the hour of in the noon. And that the names and descriptions of such sureties are .

Dated, &c.

(Signed) *M. N.* of *L.*, agent for *G. H.* of *Y.*, solicitor for the said .

To the Prosecutor [*or* widow or next of kin] and to [the committing magistrates] [*or* coroner].

No. 74.

Notice of Bail upon Habeas Corpus.

Whereas the Honourable Mr. Justice has granted a writ of Habeas Corpus, directed to the gaoler of Her Majesty's prison at , of and for the , commanding him to have the body of before the Queen's Bench Division of Her Majesty's High Court of Justice [*or* before a Judge at Chambers] immediately to undergo, &c. [*as in Form* 69].

Now take notice, that by virtue of the said writ, the said will be brought before Her Majesty's said Court [*or* before a Judge at Chambers at the hour of in the noon] on the day of , 188 , in order that he, the said , may be admitted to bail personally to appear at the next session of oyer and terminer and gaol delivery to be holden in and for the county of [*or otherwise as the case may be*], then and there to answer to all such matters and things as on Her Majesty's behalf shall be then and there objected against him, and so from day to day, and not depart that Court without leave. And, further, take notice that the names and

descriptions of the several persons who will offer themselves as bail or sureties for the said are *A. B.*, of , *C. D.*, of , *E. F.* of , and *G. H.*, of .

Dated, &c.

No. 75.

Recognizance to appear at Assizes, or Sessions of the Peace.

Be it remembered, that on the day of , 188 [*insert the names and descriptions of defendant and bail*], come before me, , one of Her Majesty's Justices of the Peace in and for the county of , and acknowledge to owe Our Sovereign Lady the Queen the several sums following (that is to say):—The said the sum of pounds, and the said and the sum of pounds each of lawful money of Great Britain, to be levied upon their several goods and chattels, lands, and tenements, to Her Majesty's use, upon condition that if the said shall personally appear at the next assizes and session of oyer and terminer and general gaol delivery [*or* at the next general quarter sessions of the peace], to be holden in and for the county of , and then and there answer to all such matters and things as on Her Majesty's behalf shall then and there be objected against him, and so from day to day, and not depart that Court without leave, then this recognizance to be void, or else to remain in full force.

Taken, &c.

No. 76.

Writ of Certiorari to Justices for Depositions.

VICTORIA, by the Grace of God, to *A. B.* and *C. D.*, Esquires, two of the keepers of Our peace and justices assigned to hear and determine divers crimes, trespasses, and other offences committed within Our county [*or* borough, *or as the case may be*], greeting: We, being willing, for certain reasons, that all and singular informations, examinations, and depositions taken or made before you, touching the commitment of *E. F.* to Our prison at , in and for the county [*or as the case may be*] of charged with felony [*or* misdemeanor] be sent by you before a Judge at Chambers, Do command you [*or* one of you] that you [*or* one of you] do send forthwith under your seals [*or* the seal of one of you] before such Judge as may be at Chambers at the Royal Courts of Justice, all and singular the said informations, examinations, and depositions, with all things touching the same, as fully and perfectly as they have been taken or made by or before you, and now remain in your custody or power, together with this Our writ, that We may cause further to be done thereon what of right and according to the law and custom of England We shall see fit to be done. Witness, &c.

To be indorsed.

By order of Court [*or* of the Honourable Mr. Justice J.
At the instance of the defendant [*if so*].
This writ was issued by, &c.

No. 77.

Writ of Certiorari to a Coroner for Depositions.

VICTORIA, by the Grace of God, &c., to *A. B.*, gentleman, one of Our coroners of and for Our county [*or* borough, *or as the case may be*], greeting: We, being

willing, for certain reasons, that all and singular informations, examinations, depositions, and inquisitions, taken or made by or before you on view of the body of *C. D.*, then and there lying dead, and touching the commitment of *E. F.* to Our prison of and for Our of , charged with feloniously killing and slaying the said *C. D.*, be sent by you before a Judge at Chambers, do command you that you send forthwith under your seal before such Judge as may be at Chambers at the Royal Courts of Justice, London, all and singular the said informations, examinations, depositions, and inquisitions, with all things touching the same, as fully and perfectly as they have been taken or made by or before you, and now remain in your custody or power, together with this Our writ, that We may cause further to be done thereon what of right and according to the law and custom of England We shall see fit to be done. Witness, &c.

Indorsement as in No. 76.

No. 78.

Entry of Plea of Not Guilty or Guilty to Indictment, Information, or Inquisition.

In the High Court of Justice,
Queen's Bench Division.

[*Middlesex.*]—The Queen
against
A. B.

Enter plea of Not Guilty [*or* Guilty] for the above-named defendant *A. B.* to the indictment [information *or* inquisition] in this prosecution by *C. D.*, his solicitor [*or* in person].

Dated, &c.

(Signed) *C. D.*, of L., agent for *G. H.*, of Y., solicitor for the said *A. B.*

[NOTE.—This præcipe must be lodged at the Crown Office, and it is unnecessary to deliver a copy to the prosecutor.]

No. 79.

Special Plea to Indictment for non-repair of Highway, that others, ratione tenuræ, are bound to repair.

In the High Court of Justice,
Queen's Bench Division.

[*Lincolnshire.*]—The Queen
against
The inhabitants of the parish of .

And now, that is to say, on the day of , 188 , before our said Lady the Queen, in the Queen's Bench Division of Her Majesty's High Court of Justice, at the Royal Courts of Justice, London, *A. B.* and *C. D.*, two of the inhabitants of the said parish of , by *F. F.*, their solicitor, for themselves and the rest of the inhabitants of the said parish (excepting one *G. H.*), come into Court here, and having heard the said indictment read, say, that our Lady the Queen ought not further to prosecute the said indictment against the inhabitants of the parish aforesaid (excepting the said *G. H.*, as aforesaid), because they say that as to the said part of the said highway, in the said indictment described to be ruinous, miry, deep, broken, and in great decay. The said *G. H.*, by reason of his tenure of certain lands and tenements called , lying and being in the said parish, ought to repair and amend

the said part of the said highway so alleged to be ruinous, miry, deep, broken, and in decay, as aforesaid, when and so often as there should be occasion (as the said *G. H.* and all those who held the said lands and tenements for the time being, from the time whereof the memory of man is not to the contrary hitherto were used and accustomed and of right ought to do), and this they, the said *A. B.* and *C. D.*, are ready to verify; wherefore they pray judgment, and that they and the rest of the inhabitants of the said parish of (excepting the said *G. H.*, as aforesaid), by the Court here, may be dismissed and discharged from the said premises, in the said indictment above specified.

(Signed).

[NOTE.—If settled by counsel it must be signed by him; if not, it may be signed by the solicitor or the party if defending in person: r. 130, *ante*, p. 56. It must be filed at the Crown Office and a copy delivered to the prosecutor: r. 128, *ante*, p. 56. For replication, see No. 82, *post*.]

No. 80.

Demurrer to Indictment or Information.

[*Heading as in No.* 78.]

And now, that is to say, on the day of , 188 , before our said Lady the Queen, in the Queen's Bench Division of Her Majesty's High Court of Justice at the Royal Courts of Justice, London, comes the said *A. B.* by , his solicitor [*or* in his own proper person], and having heard the said indictment [*or* information] read, says that our said Lady the Queen ought not further to prosecute him, the said *A. B.*, by reason of the premises in the said indictment [*or* information] mentioned, because he says that the said indictment [*or* information], and the matters therein contained, are not sufficient in law to compel him, the said *A. B.*, to answer thereto; and this he is ready to verify. Wherefore he, the said *A. B.*, prays judgment, and that by the Court here he may be dismissed and discharged from the said premises in the same indictment [*or* information] specified.

(Signed) .

[NOTE.—See note to last form. For joinder in demurrer, see No. 85, *post*.]

No. 81.

Plea of Not Guilty and Justification pursuant to 6 & 7 *Vict. c.* 96, *s.* 6.

[*Heading as in No.* 78.]

And now, that is to say, on the day of 188 , before our said Lady the Queen, in the Queen's Bench Division of Her Majesty's High Court of Justice, at the Royal Courts of Justice, London, comes the said *A. B.* by , his solicitor [*or* in his own proper person], and having heard the said indictment read, he says that he is not guilty thereof, and hereupon he puts himself upon the country. And Frederick Cockburn, Esquire, coroner and attorney of our said Lady the Queen, before the Queen herself, who for our said Lady the Queen in this behalf prosecutes, does the like.

And for a further plea the said *A. B.*, pursuant to the statute in that behalf, says that our said Lady the Queen ought not further to prosecute the said indictment [*or* information] against him, because he says that it is true that [*here allege the truth of every libellous part of the publication set out in the indictment.*]

And the said *A. B.* further says, that before and at the time of the publication in the said indictment [*or* information] mentioned [*here state facts which rendered the publication of benefit to the public*]; by reason whereof it was for the public benefit that the said matters so charged in the said indictment [*or* information] should be published, and this he, the said *A. B.*, is ready to verify. Wherefore he prays judgment, and that by the Court here he may be dismissed and discharged from the said premises in the said indictment [*or* information] above specified.

(Signed).

[NOTE.—See note to Form No. 79, *ante*. For replication, see No. 83, *post*.]

No. 82.

Replication to Special Plea of Ratione Tenuræ.

[*Heading as in No.* 79.]

And hereupon Frederick Cockburn, Esquire, coroner and attorney of our said Lady the Queen in the Queen's Bench Division of Her Majesty's High Court of Justice, before the Queen herself, who for our said Lady the Queen in this behalf prosecutes, says that by reason of anything in the said plea above pleaded in bar alleged our said Lady the Queen ought not to be precluded from prosecuting the said indictment against the said inhabitants of the said parish of because he says that the said *G. H.* ought not to repair and amend the said part of the said highway so alleged to be ruinous, miry, deep, broken, and in decay, as aforesaid, by reason of his said tenure in manner and form as in and by the said plea is above supposed and alleged, and this he, the said Frederick Cockburn, prays may be inquired of by the country, and the said *A. B.* and *C. D.* for themselves and the rest of the inhabitants of the parish of (excepting the said *G. H.*) do the like.

Therefore let a jury come.

No. 83.

Replication to Plea of Justification pursuant to 6 & 7 *Vict. c.* 96, *s.* 6.

[*Heading as in No.* 78.]

And as to the plea of the said *A. B.* by him secondly above pleaded Frederick Cockburn, Esquire, coroner and attorney of our said Lady the Queen, before the Queen herself, who for our said Lady the Queen in this behalf prosecutes, says that by reason of anything in the said second plea alleged, our said Lady the Queen ought not to be precluded from further prosecuting the said indictment against the said *A. B.*, because he says that he denies the said several matters in the said second plea alleged, and says that the same are not, nor are, nor is any or either of them true, and this he, the said Frederick Cockburn, prays may be inquired of by the country, and the said *A. B.* does the like.

Therefore let a jury come.

No. 84.

Demurrer by Prosecutor to Defendant's Plea.

[*Heading as in No.* 78.]

And Frederick Cockburn, Esquire, coroner and attorney of our said Lady the Queen, who, for our said Lady the Queen, in this behalf prosecutes, having heard

the said plea of the said *A. B.*, by him, in manner and form above pleaded in bar, for our said Lady the Queen says, that the said plea, and the matters therein contained, in manner and form as the same are above pleaded and set forth, are not sufficient in law, and that he, the said coroner and attorney for our said Lady the Queen, is not bound by the law of the land to answer the same, and this he, the said coroner and attorney, is ready to verify. Wherefore, for want of a sufficient plea in this behalf, the said coroner and attorney for our said Lady the Queen prays judgment, and that the said *A. B.* may be convicted of the premises above charged upon him.

(Signed) .

No. 85.

Joinder in Demurrer by Prosecutor.

[*Heading as in No.* 78.]

And Frederick Cockburn, Esquire, coroner and attorney of our said Lady the Queen, before the Queen herself, who for our said Lady the Queen in this behalf prosecutes, says that our said Lady the Queen ought not to be barred from prosecuting the said indictment [*or* from having her aforesaid information], against the said *A. B.*, because he says, that the said indictment [*or* information] and the matters therein contained, are good and sufficient in law to compel him, the said *A. B.*, to answer thereto. Therefore, he the said coroner and attorney for our said Lady the Queen prays judgment, and that the said *A. B.* may be convicted of the premises charged upon him in and by the said indictment [*or* information].

No. 86.

Joinder in Demurrer by Defendant.

[*Heading as in No.* 78.]

And the said *A. B.* by says that the said plea and the matters therein contained, in manner and form as the same are above pleaded and set forth, are sufficient in law to bar or preclude our said Lady the Queen from having her aforesaid information against him, the said *A. B.*, and that he is ready to verify and prove the same, as the Court shall award. Wherefore, inasmuch as the said coroner and attorney has not answered or denied the said plea, nor in any manner replied to the same, he the said *A. B.* prays judgment, and that he may be discharged by the Court here, of and from the premises by the said information above charged upon him.

No. 87.

Order to extend Time for Pleading.

In the High Court of Justice,
Queen's Bench Division.
The Honourable Mr. Justice , Judge in Chambers.

[*Middlesex.*]—The Queen
against
A. B.

Upon reading the affidavit of filed the day of 188 , and upon hearing :

It is ordered that the Defendant [*or* Prosecutor] shall have days further to plead to the [*indictment*] in this prosecution [upon the following terms, viz. :—]

Dated, &c.

No. 88.

Notice of Trial to be given to the Prosecutor upon Indictment removed by the Defendant.

In the High Court of Justice,
Queen's Bench Division.

[*Middlesex.*]—The Queen
v.
A. B.

Take notice, that the indictment found against the above-named Defendant at the sessions held at in the county of on the day of for certain [*misdemeanors*] is removed by writ of Certiorari, at the instance of the said Defendant, into the Queen's Bench Division. And that he has appeared and pleaded not guilty thereto, and will try the issue thereupon joined at the next assizes to be holden at in and for the county of on the day of 188 [*or* in Middlesex *or* [*London*] on the day of 188 , at the Royal Courts of Justice, London] pursuant to the condition of the recognizance entered into in that behalf.

Dated, &c.

(Signed) *M. N.* of *L.*, Agent for *G. H.* of *S.*, Solicitor for *A. B.*

To *X. Y.*,
The Prosecutor's Solicitor.

[NOTE.—If it is not known who the prosecutor is, notice must be given to the witnesses whose names are on the back of the indictment.

Ten days' notice of trial must be given in all cases. See r. 150, *ante*, p. 65 ; and as to notice of trial generally, rr. 148 to 154, *ante*, pp. 65, 66.]

No. 89.

Notice of Trial in Middlesex or London.

In the High Court of Justice,
Queen's Bench Division.

Middlesex [or *London*].—The Queen
against
C. D.

Take notice of trial of the issue joined in this prosecution in Middlesex [*or* London], for the day of next, at the Royal Courts of Justice, London.

Dated, &c.

No. 90.

Notice of Trial for the Assizes.

In the High Court of Justice,
Queen's Bench Division.

Surrey.—The Queen
against
A. B.

Take notice of trial of the issue joined in this prosecution for the next assizes to be holden at in and for the county of on the day of 188 .

Dated, &c.

No. 91.

Record of Indictment for Trial.

Pleas before our Lady the Queen in the Queen's Bench Division of Her Majesty's High Court of Justice, at the Royal Courts of Justice, London, in the year of our Lord one thousand eight hundred and eighty-six.

Amongst the Pleas of the Queen Roll.

[*County or venue in the margin.*] Some time ago, that is to say, on the day of at, &c., before, &c., [*Recite the caption of the indictment in the past tense.*]

Amongst the Indictments of 1886, No. } It was presented in manner and form following, that is to say [*copy the indictment*]: Which said indictment our said Lady the Queen afterwards, for certain reasons, caused to be brought before her, to be determined according to the law and custom of England. [*When bill found in this Court omit these words.*] Wherefore the sheriff of the said county of was commanded that he should cause them, the said *A. B.*, *C. D.*, &c. [*the Defendants*], to come and answer to our said Lady the Queen, touching and concerning the premises aforesaid. And now, that is to say, on the day of in the year of our Lord one thousand eight hundred and eighty-five, before our said Lady the Queen, at the Royal Courts of Justice, London, come the said *A. B.*, *C. D.*, and *E. F.*,* by their solicitors [*or* in their own proper persons], and having heard the said indictment read, they severally say that they are not guilty thereof, and hereupon they severally put themselves upon the country. and Frederick Cockburn, Esquire, coroner and attorney of our said Lady the Queen, in the Queen's Bench Division of Her Majesty's High Court of Justice. before the Queen herself, who for our said Lady the Queen in this behalf prosecutes, does the like. Therefore let a jury thereupon come.

* *Where inhabitants of a parish or county, &c., are Defendants, the plea and award of jury process is as under :—*

And now, that is to say, on the day of in the year of our Lord one thousand eight hundred and eighty-six, before our said Lady the Queen at the Royal Courts of Justice, London, come *A. B.* and *C. D.*, two of the inhabitants of the said parish of on behalf of themselves and the rest of the inhabitants of the said parish, by *E. F.*, their solicitor [*or*, in their own proper persons], and having heard the said indictment read, they, for themselves and the rest of the inhabitants of the said parish, say that the inhabitants of the said parish of are not guilty thereof, and hereupon they for themselves and the rest of the inhabitants of the said parish put themselves upon the country. And Frederick Cockburn, Esquire, coroner and

attorney of our said Lady the Queen, in the Queen's Bench Division of Her Majesty's High Court of Justice, before the Queen herself, who for our said Lady the Queen in this behalf prosecutes, does the like. Therefore, &c.

[NOTE.—Should there be a special plea of ratione tenuræ (No. 79) that plea and the replication thereto (No. 82) must be substituted for the plea in this form: so likewise should there be a plea of justification under 6 & 7 Vict. c. 96, that plea (as in No. 81) and the replication thereto (No. 83) must be substituted.]

No. 92.

Record of Information, Criminal, for Trial.

Pleas before our Lady the Queen, in the Queen's Bench Division of Her Majesty's High Court of Justice, at the Royal Courts of Justice, London, in the year of our Lord one thousand eight hundred and eighty-six.

Amongst the Pleas of the Queen Roll.

Amongst the informations of 1886, No. } [*Middlesex.*]—Be it remembered, that Frederick Cockburn, Esquire, coroner and attorney of our said Lady the Queen, in the Queen's Bench Division of Her Majesty's High Court of Justice, before the Queen herself, who for our said Lady the Queen in this behalf prosecutes in his proper person, came here into the Queen's Bench Division of Her Majesty's High Court of Justice, before the Queen herself, at the Royal Courts of Justice, London, on the day of one thousand eight hundred, &c. And for our said Lady the Queen, brought into the said Court, before the Queen herself, a certain information, against *C. D.*, which said information follows in these words, that is to say [*here set out the information verbatim*].

* These words may be omitted if process not actually issued.

*[Wherefore the sheriff of the county of was commanded that he should cause him, the said *A. B.*, to come to answer to our said Lady the Queen touching and concerning the premises aforesaid.] And now, that is to say, on the day of , in the year of our Lord one thousand eight hundred and eighty-five, before our said Lady the Queen, at the Royal Courts of Justice, London, comes the said *A. B.*, by his solicitor, and having heard the said information read, says, that he is not guilty thereof, and hereupon he puts himself upon the country, and Frederick Cockburn, Esquire, coroner and attorney of our said Lady the Queen, in the Queen's Bench Division of Her Majesty's High Court of Justice, before the Queen herself, who for our said Lady the Queen in this behalf prosecutes, does the like.† Therefore let a jury thereupon come.

† Should plea of justification under statute be entered it must be added here.

[NOTE.—See note to last form.]

No. 93.

Record of Information (Ex Officio) for Trial.

[*Same as No.* 92.]

[*Using the name of the Attorney or Solicitor General, instead of that of the Queen's coroner and attorney.* Thus:] Sir Richard Webster, Knight, Attorney General of our present Sovereign Lady the Queen, who for our said Lady the Queen in this behalf prosecutes, came here into the Queen's Bench Division, &c.

No. 94.

Suggestion that a Fair and Impartial Trial cannot be had.

And hereupon the said says that a fair and impartial trial of the issue joined in this prosecution cannot be had by a jury of the county of , and that it is convenient that the said issue be tried by a jury of the county of , which is a county next adjoining to the said county of , and for that reason he the said prays that a jury may come before our said Lady the Queen, out of the body of the said county of , to try the issue aforesaid. And because the said does not deny the said allegation, nor say anything against the same, and because it appears to the said Court, before the Queen herself, that the said allegation is true, therefore let a jury of the said county of thereupon come.

No. 95.

Suggestion on Indictment against Inhabitants of a County.

And hereupon the said coroner and attorney of our said Lady the Queen, for our said Lady the Queen, says that all the inhabitants of the said county of are concerned in interest in the event of the trial of the said issue, and for that reason he the said coroner and attorney prays that a jury may come before our said Lady the Queen, out of the county of which is an adjoining county to the said county of in order to try the issue aforesaid. And because the aforesaid inhabitants of the said county of do not deny the said allegation, nor say anything against the same, and because it appears to the said Court that the said allegation is true, therefore let a jury of the said county of thereupon come.

No. 96.

Suggestion under 38 *Geo.* 3, *c.* 52, *to try in an adjoining County to a Town and County of the Town.*

And hereupon the said , coroner and attorney of our said Lady the Queen, who prosecutes as aforesaid, by virtue of the statute in such case made and provided, prays the said Court now here to direct that the said issue so joined upon the said indictment may be tried by a jury of the county of [*York*], being the county next adjoining to the town and county of the town of [*Kingston-upon-Hull*]. And the said Court thinking it fit and proper so to do, therefore let a jury of the said county of [*York*] thereupon come.

[*When on behalf of the defendant insert the defendant's name in the place of the Queen's coroner and attorney.*]

No. 97.

Suggestion in Berwick-upon-Tweed.

And because the borough of Berwick-upon-Tweed is a place where the burgesses of the said borough, by reason of their privilege, ought not to be put upon a jury to try the said issue out of the said borough, but the said issue ought to be tried by a jury of the county of Northumberland, which is the next adjacent county to the said borough of Berwick-upon-Tweed.

Which allegations of the said *A. B.* are not denied by the said *F. C.*, Esquire, therefore let a jury of the said county of Northumberland thereupon come.

No. 98.

Suggestion in one of the Cinque Ports.

And hereupon the said *F. C.*, Esquire, who prosecutes as aforesaid, says that the said town of Deal is one of the ancient towns of the Cinque Ports; and that the inhabitants within the same town, and also the inhabitants within the liberty of the Cinque Ports, have such franchises, that no Justice, or any other minister of our said Lady the Queen can or ought to enter the town to execute any office there, nor ought the freeholders or residents within the liberties of the said Cinque Ports to go out of the same, to make or constitute any jury without the said liberties. And therefore he prays that a jury may come before our said Lady the Queen, out of the body of the county of Kent, in order to try the issue aforesaid. And because the said [*defendant*] does not deny the said allegation; and because it appears to the said Court that it is fit and proper so to do, the same is granted to him. Therefore let a jury thereupon come out of the body of the said county of Kent.

No. 99.

Suggestion where the Sheriff is Defendant.

And because the aforesaid *A. B.*, the defendant above-mentioned, now is one of the sheriffs of the said where the supposed offence in the said information [*or* indictment] is mentioned to be committed, and therefore is concerned in interest in the event of the trial of the issue; therefore the coroners of the said county are commanded that they cause to come.

No. 100.

Judge's Order to strike Special Jury as provided by "The Juries Act, 1870."

In the High Court of Justice,
Queen's Bench Division.
The Honourable Mr. Justice in Chambers.

[*Middlesex.*]—The Queen
against
A. B.

Upon reading and upon hearing counsel on both sides [*or as the case may be*]—

It is ordered at the prayer and instance of the [*Prosecutor*], that the issue joined in this prosecution be tried by a special jury of the county of and that the sheriff of the said county or his under sheriff do attend at the Crown Office with the jurors' book and the special jurors' list of the said county, and the numbers referring to the names in such list, written upon distinct pieces of parchment or card. And that the proper officer at the Crown Office shall nominate forty-eight men qualified to serve on special juries within the said county, and the solicitor or agent for the said prosecutor shall strike out twelve, and the solicitor or agent for the defendant shall in like manner strike

out twelve of the said forty-eight, and that twenty-four, the remainder of the said forty-eight, shall be returned for the trial of the issue joined in this prosecution.

Dated, &c.

[NOTE.—See r. 158, *ante*, p. 67.]

No. 101.

Roll for Trial at Bar.

[*Same as No.* 112.]

[NOTE.—Up to the award of the jury.]

No. 102.

Warrant of Tales.

Middlesex. Sir Richard Webster, Knight, Attorney General of our present Sovereign Lady the Queen [for our said Lady the Queen, *omit these words if the tales is prayed for the defendant*] prays a Tales de Circumstantibus to be granted by the Court here according to the form of the statute in such case made and provided for the trial of the issue joined between our said Lady the Queen and *A. B.* upon an indictment [*or* information] for certain [misdemeanors] lest the jury to be taken in this behalf do remain untaken for default of jurors.

Dated, &c.

(Signed)
R. WEBSTER,
(Attorney-General).

[NOTE.—See note to r. 158, *ante*, p. 67.]

No. 103.

Associate's Certificate after Trial.

In the High Court of Justice,
Queen's Bench Division.

Middlesex.—The Queen
against
A. B.

I certify that this [*indictment*] was tried before the Honourable Mr. Justice at and a [*special*] jury of the county of on the day of , 1886.

The jury found the defendant guilty [*or* not guilty, *or* guilty on *such and such* counts, and not guilty *on such and such* counts, *enumerating them*].

That the Judge sentenced the defendant to pay a fine of, &c.

That the Judge certified [*that the case was proper to be tried by a special jury or other certificate, as the case may be*].

Dated, &c.

(Signed)
X. Y.
[*Title of Officer.*]

No. 104.

Postea on Trial in Middlesex or London.

Afterwards on the day of , 188 , before the Right Honourable John Duke, Baron Coleridge, Lord Chief Justice of England [*or* the Honourable Mr. Justice] come as well the within-named *F. C.*, Esquire, who for our said Lady the Queen in this behalf prosecutes as the within-named *A. B.*, by his solicitor within-mentioned, (A) and a [*special*] jury of the within county, to wit [*here insert the names and descriptions of the jurors who attended*], being summoned and called come and are sworn upon the said jury. Whereupon public proclamation is made here in Court for our said Lady the Queen, as the custom is, that if there be any one who will inform the aforesaid Chief Justice [*or* Judge] the Queen's Attorney General or the jurors of the jury aforesaid, concerning the matters within-contained, he should come forth and should be heard, and hereupon *J. P.*, Esquire, one of the counsel of our said Lady the Queen [*or* of counsel learned in the law], offers himself on behalf of our said Lady the Queen to do this. Whereupon the Court here proceeds to the taking of the inquest aforesaid (B) by the jurors aforesaid, now here appearing for the purpose aforesaid, who being chosen, tried, and sworn to speak the truth touching and concerning the matters within contained [*when convicted*] say, upon their oath, that the said *A. B.* is guilty of the premises in the [*if in some counts only, say:* second and third counts of the] indictment [*or* information] within specified and charged upon him in manner and form, as in and by the said indictment [*or* information] is within alleged against him.

[*When acquitted*] say upon their oath that the said *A. B.* is not guilty of the premises in the indictment within specified and charged upon him, in manner and form as the said *A. B.* has, by pleading for himself, alleged.

If a tales has been prayed—

(A.) And a [*special*] jury of the within county being summoned and called, some of them, that is to say [*name such of the jurors as appeared at the trial*] and because the rest of the jurors of the said jury do not appear, therefore others of the bystanders being chosen by the sheriff of the within county, at the request of the said *A. B.* [*or* of the said Frederick Cockburn], and by command of the said Chief Justice [*or* Judge] are newly appointed, whose names are added to the panel according to the form of the statute in such case made and provided, which said jurors so newly appointed, to wit, [*insert the names and description of the talesmen*] being called likewise come, and are sworn upon the said jury.

(B.) As well by the jurors aforesaid first impanelled and sworn, as by the other jurors now here appearing, who, together with the jurors aforesaid first impanelled and sworn, being chosen, tried, and sworn to speak the truth, &c.

No. 105.

Postea at the Assizes.

Afterwards on the day of , 188 , [*the commission day*] at , in the county of , before the Honourable Mr. Justice and the Honourable Mr. Justice , justices of our said Lady the Queen assigned to hold the assizes in and for the county of within-mentioned, according to the form of the statute in such case made and provided, come [*&c. as in No.* 104, *supra*].

No. 106.

Warrant to apprehend Defendant sentenced at Trial when not present at the Trial.

Whereas the above-named defendant *A. B.* was on the day of , 188 , at the sittings of the High Court of Justice, in the county of [*Middlesex*] before me the Honourable Mr. Justice tried, and by a jury of the country convicted of certain misdemeanors [*or* felonies], whereof he is indicted, and it was thereupon considered and adjudged and ordered by me that for the offences whereof he was so convicted as aforesaid he the said *A. B.* should be imprisoned in Her Majesty's prison at in and for the county of for the space of [*three calendar months*].

These are therefore to command you to apprehend and take the said *A. B.* and lodge him in the said prison at aforesaid, there to be imprisoned and kept in safe custody by the gaoler of the said prison in execution of the said judgment.

Dated, &c.

[NOTE.—See rr. 172 and 174, *ante*, pp. 73, 74.]

No. 107.

Warrant after Conviction to hold Defendant to Bail to appear for Sentence.

In the High Court of Justice,
Queen's Bench Division.

England, to wit. Whereas it is certified to me by [*one of the clerks in the Crown Office*], that [*as in certificate*].

These are therefore to command you in Her Majesty's name to apprehend and take the said *A. B.* before one of the Judges of the High Court of Justice, if taken in or near the cities of London or Westminster, if elsewhere before some justice of the peace near to the place where he shall be taken, to the end that he may become bound by his own recognizance in the sum of pounds, with two sureties in the sum of pounds each [*or say*, with sufficient sureties], for his personal appearance in the Queen's Bench Division of Her Majesty's High Court of Justice on the day of , 188 , in order to receive the judgment of the said Court for his said offence, and to be further dealt with according to law.

Dated, &c.

(Signed)
COLERIDGE,
(Lord Chief Justice of England).

To Mr. *L.*, tipstaff of the Queen's Bench Division.
To all constables and all other peace officers whom it may concern.

[NOTE.—See r. 173, *ante*, p. 73.]

No. 108.

Order to commit when Defendant sentenced at Trial.

In the High Court of Justice,
Queen's Bench Division.

[*Cheshire.*]—The Queen
against
A. B.

The Defendant *A. B.* being present here in Court, and being by a jury of

the country convicted of certain misdemeanors [*or* felonies], whereof he is indicted in this prosecution, it is ordered that he, the said Defendant, [*do pay a fine to our Sovereign Lady the Queen of pounds of lawful money of Great Britain, and further that he be imprisoned until the said fine be paid; and the said Defendant is now here in Court committed to the custody of the gaoler of Her Majesty's prison at until the said fine be paid (or as the case may be)*].

Dated, &c.

By the Court.

[NOTE.—See r. 173, *ante*, p. 73.]

No. 109.

Certificate of Conviction from Clerk of Assize or Associate for application for Warrant.

[*Heading as in No.* 103.]

I hereby certify that the above-named Defendant *A. B.* was, on the day of , at , tried before the Honourable Mr. Justice and a [special] jury, upon an indictment against him for [*here state offence*], that the jury found the said Defendant guilty, and that the Judge sentenced the said Defendant to [*here insert sentence*].

Dated, &c.

(Signed)
X. Y.
[*Title of officer*].

[NOTE.—See r. 174, *ante*, p. 74.]

No. 110.

Warrant of Arrest after Conviction and Recognizances estreated.

England, to wit. Whereas it is certified to me by one of the masters of the Crown Office that at the assizes [*or as the case may be*] holden in and for the county of , on the day of , an indictment for certain [misdemeanors] was found by the grand jury of the said county against *A. B.*, which said indictment was afterwards by writ of Certiorari issuing out of the Queen's Bench Division of Her Majesty's High Court of Justice, removed into the said Court, and thereupon the said *A. B.* gave a recognizance to answer the said indictment, and not depart the said Court without leave, and that the said *A. B.* having appeared and pleaded not guilty to the said indictment, was at , on the day of last, in and for the county of Middlesex, before the [*naming the Judge*] and by a jury of the country convicted of the said offence charged upon him in and by the said indictment; and it is further certified that on the day of last the said *A. B.*, having been three times publicly called in the said Court upon his said recognizance and not appearing, it was ordered by the said last-mentioned Court that his default should be recorded and the said recognizance estreated into the Exchequer; and it is further certified that the said *A. B.* hath not appeared in the said Queen's Bench Division of Her Majesty's High Court of Justice, in order to receive the judgment of the said Court for the said offence, nor is he now under any recognizance so to do. This is therefore to command you, in Her Majesty's name, to apprehend and take the said *A. B.*, and if he shall be apprehended during the sittings of the said last-mentioned Court, to bring him into the Queen's Bench Division of Her Majesty High Court of Justice, at the Royal Courts of Justice, London, to receive the judgment of the said Court for

his said offence ; or if he shall be apprehended in vacation, forthwith to convey him to the common prison of the county, city, or place where he shall be apprehended, there to remain without bail or mainprise until he shall be discharged by due course of law.

Dated, &c.

[NOTE.—See r. 178, *ante*, p. 75.]

No. 111.

Warrant of Arrest on Conviction by Default to hold Defendant to Bail.

England, to wit. Whereas, &c. (*as in No.* 110).

And it is further certified that the said Defendant having suffered judgment to pass against him by default upon the said information [*or* indictment], judgment has been thereupon signed against him, and it is further certified that the said Defendant has not as yet received the sentence of the said Court for the said offence, nor is he under any recognizance in the said Court so to do.

These are, therefore, to command you and every of you on sight hereof to apprehend and take the said *A. B.* and bring him before me or one other of the Judges of the Queen's Bench Division of the High Court of Justice if taken in or near the cities of London and Westminster, if elsewhere before some justice of the peace near to the place where he shall be herewith taken, to the end that he may become bound with sufficient sureties for his personal appearance in the Queen's Bench Division of Her Majesty's High Court of Justice on the day of in order to receive the sentence of the said Court for the said offence and be further dealt with according to law.

Dated, &c.

No. 112.

Entry or Judgment Roll on Indictment.

A. B. [*the Defendant's name.*]

As yet of 1886. The Queen.

Amongst the Indictments of 1886. No. } *Middlesex.*—Some time ago, that is to say [*here copy the caption of the indictment, and the indictment verbatim, according to the office copy, omitting the witnesses names*], [which said Indictment our said Lady the Queen afterwards for certain reasons caused to be brought before her, to be determined according to the law and custom of England.]

[Award of Certiorari. This must be omitted when the indictment is found in this Court.]

Wherefore the sheriff of the said county of was commanded that he should cause him the said *A. B.* [*the Defendant*] to come to answer to our said Lady the Queen, touching and concerning the premises aforesaid. [*If a capias has been issued say instead of* "cause him the said *A. B.* to come," "take him."]

[Award of venire or capias to answer.]

And now, that is to say, on the day of , in the year of our Lord one thousand eight hundred and eighty-six before our said Lady the Queen in the Queen's Bench Division of Her Majesty's High Court of Justice at the Royal Courts of Justice, London, comes the said *A. B.* by *C. D.*, his solicitor, and having heard the said indictment read, he says that he is not guilty thereof, and hereupon he puts himself upon the country. And Frederick Cockburn, Esquire, coroner and attorney of our said Lady the Queen, in the said Queen's Bench Division of Her Majesty's High Court of Justice, before the Queen herself, who for our said Lady the Queen in this behalf prosecutes, does the like. Therefore let a jury thereupon come.

[Issue.]

[For other pleas *see* Nos. 79 to 86 and 113, and suggestions for change of venue, Nos. 94 to 99.]

[Postea. For other forms *see* Nos. 104 and 105.]

And afterwards, that is to say, on the day of , in the year of our Lord one thousand eight hundred and eighty-six at the Royal Courts of Justice, London, before the Right Honourable John Duke, Baron Coleridge, Lord Chief Justice of England, comes as well the aforesaid Frederick Cockburn, Esquire, who for our said Lady the Queen in this behalf prosecutes as the said *A. B.* by *C. D.*, his solicitor above-mentioned, and the jurors of the jury being summoned and called, to wit [*here insert the names and descriptions of the jurors, and if a tales, add the necessary words from No.* 104], come and are sworn upon the said jury. Whereupon public proclamation is made here in Court for our said Lady the Queen, as the custom is, that if there be any one who will inform the aforesaid Chief Justice, the Queen's Attorney General, or the jurors aforesaid, concerning the matters within contained, he should come forth and should be heard; and hereupon *F. T.*, Esquire, one of the counsel of our said Lady the Queen, offers himself on behalf of our said Lady the Queen to do this. Whereupon the Court here proceeds to the taking of the inquest aforesaid, by the jurors aforesaid now here appearing for the purpose aforesaid, who being chosen, tried, and sworn, to speak the truth touching and concerning the matters aforesaid, say upon their oath that the said *A. B.* is guilty of the premises in the second and third counts of the indictment within specified and charged upon him in manner and form as in the said indictment is alleged against him and that he the said *A. B.* is not guilty of the premises in the first and fourth counts of the said indictment specified and charged upon him in manner and form as the said *A. B.* has by pleading for himself alleged.

[Entry of judgment upon verdict after conviction.]

Whereupon all and singular the premises being seen and fully understood by the Queen's Bench Division of Her Majesty's High Court of Justice now here. It is considered and adjudged by the said Court here that he the said *A. B.*, for his offences aforesaid be taken, and so forth.

[Final judgment.]

And afterwards, that is to say, on the day of , in the year last aforesaid, before our Lady the Queen in the Queen's Bench Division of Her Majesty's High Court of Justice at the Royal Courts of Justice, London, comes the said *F. C.*, who for our said Lady the Queen in this behalf prosecutes. And the said *A. B.*, being present here in Court, it is considered and adjudged and ordered by the said Court here, that he the said *A. B.*, for his offences aforesaid, &c. [*Copy the sentence from the order of Court.*]

No. 113.

Entry of Plea of Guilty or Confession.

[*Instead of "says he is not guilty"*] says he cannot deny but that he is guilty of the premises in the indictment within specified and charged upon him, and confesses and acknowledges the premises aforesaid, in manner and form as in and by the said indictment is within alleged against him; and hereupon he puts himself upon the mercy of our said Lady the Queen.

No. 114.

Entry of Retraxit of Plea, and Judgment thereon.

And on the day of , before our said Lady the Queen in the Queen's Bench Division of Her Majesty's High Court of Justice at the Royal Courts of Justice, London, comes the said Frederick Cockburn, who for our said Lady the Queen in this behalf prosecutes as the said *A. B.*, by *C. D.*, his

solicitor [*or* in his own proper person], and the said *A. B.* having withdrawn his plea by him above pleaded, in manner and form aforesaid, our said Lady the Queen remains against him the said *A. B.* without defence in this behalf. Whereupon all and singular the premises being seen and fully understood by the said Queen's Bench Division now here, it is considered and adjudged by the said Court here that he, the said *A. B.*, be convicted of the trespass and offence aforesaid, and that he be taken, and so forth.

No. 115.

Entry of Judgment upon Verdict after Acquittal.

[*After the Postea.*]—Whereupon all and singular the premises being seen and fully understood by the Queen's Bench Division of Her Majesty's High Court of Justice now here. It is considered and adjudged by the said Court here, that he, the said *A. B.*, do depart hence without day in this behalf.

No. 116.

Entry of Judgment by Default.

And now, that is to say, on the day of in the year of our Lord one thousand eight hundred and eighty-five, before our said Lady the Queen in the Queen's Bench Division of Her Majesty's High Court of Justice at the Royal Courts of Justice, London, comes the said *A. B.* [*by C. D., his solicitor*], and having heard the said indictment read, he prays a day to answer thereto, until on the day of . And it is granted to him. The same day is given as well to *F. C.*, Esq., coroner and attorney of our said Lady the Queen, who for our said Lady the Queen, in this behalf prosecutes, as to the said *A. B.* On which said day of before our said Lady the Queen comes the said *F. C.* who prosecutes for our said Lady the Queen in this behalf in his proper person. And the said *A. B.*, although being solemnly called to answer, does not come, nor does he say anything in bar, or in abatement of the said indictment, nor does he in any manner answer to the said indictment, or to the premises in the said indictment specified above charged upon him. Wherefore our said Lady the Queen remains against him the said *A. B.*, without defence in this behalf. Whereupon all and singular the premises being seen and fully understood by the said Court now here, it is considered and adjudged by the said Court here that the said *A. B.* be convicted of the trespass and offence aforesaid, and that he be taken, and so forth.

No. 117.

Entry of Judgment on Confession.

[*See Confession or Plea of Guilty, No.* 113.]

Whereupon all and singular the premises being seen and fully understood by the Queen's Bench Division of Her Majesty's High Court of Justice now here. It is considered and adjudged by the said Court here, that he, the said *A. B.*, be convicted of the trespass and offence aforesaid. And that for his offences aforesaid he be taken, and so forth.

No. 118.

Entry of Judgment for want of Joinder in Demurrer.

Whereupon all and singular the premises being seen and fully understood by the Queen's Bench Division of Her Majesty's High Courts of Justice now here, for that no one comes on behalf of our said Lady the Queen [*or* on behalf of the said *A. B., as the case may be*], further to inform the Court here of the premises, or to join in demurrer with the said *A. B.* It is considered and adjudged by the said Court here, that the said *A. B.* be dismissed and discharged of and from the premises above specified in the said indictment, and that he depart hence without day in this behalf.

[*The above is in case of demurrer to indictment; in case of demurrer to other proceedings, judgment after conviction, or acquittal, or for the Crown or prosecutor, or for Defendant, must be substituted, as the case may be.*]

No. 119.

Entry of Judgment on Demurrer after Argument.

Whereupon all and singular the premises being seen and fully understood by the Queen's Bench Division of Her Majesty's High Court of Justice now here, it is considered and adjudged, by the said Court here, that the said plea of the said *A. B.* is bad, and insufficient in law to bar or preclude our said Lady the Queen from further prosecuting the said *A. B.* upon the said information [*or* indictment], and therefore that the said *A. B.* for want of a sufficient plea in this behalf, be convicted of the premises in the information [*or* indictment] within specified, and charged upon him in manner and form as in and by the said information [*or* indictment] is within alleged against him. And that for his offences aforesaid he be taken, and so forth.

[*The above form applies to judgment of conviction upon demurrer to plea to indictment or information. In case of judgment on demurrer to any other proceeding or pleading, the form must be varied accordingly—substituting a judgment of acquittal.*]

No. 120.

Entry of a Nolle Prosequi.

Afterwards on the day of , before our said Lady the Queen at the Royal Courts of Justice, London, come as well the said coroner and attorney of our said Lady the Queen, in the Queen's Bench Division of Her Majesty's High Court of Justice, who for our said Lady the Queen in this behalf prosecutes in his proper person, as the said *A. B.*, by his solicitor. And the said coroner and attorney for our said Lady the Queen says that he will not further prosecute the said *A. B.* upon the information [*or* indictment] aforesaid. Whereupon all and singular the premises being seen and fully understood by the Court now here, it is considered and adjudged, by the said Court here, that all proceedings upon the said information [*or* indictment] against the said *A. B.* be altogether stayed, and that the said *A. B.* be discharged of and from the said information [*or* indictment].

[*In the case of an information filed by the Attorney General, his name must be used instead of that of the Queen's coroner and attorney.*]

No. 121.

Recognizance to appear for Sentence.

Be it remembered, that on the day of 188 , [*insert names and descriptions of the Defendant and bail, if bail required*], come before me one of Her Majesty's justices of the peace in and for the county of , and acknowledge to owe our Sovereign Lady the Queen the several sums following (that is to say), the said the sum of pounds, and the said and the sum of pounds, each of lawful money of Great Britain, to be levied upon their several goods and chattels, lands and tenements, to her Majesty's use, upon condition that if he the said shall personally appear in the Queen's Bench Division of Her Majesty's High Court of Justice on the day of next, or whenever he shall thereto be required in order to receive the sentence of the said Court for certain whereof he is indicted [*or* impeached], and by a jury of the country [*or* by his own default *or* confession] convicted, and so from day to day, and not depart that Court without leave, then this recognizance to be void, or else to remain in full force.

Taken, &c.

No. 122.

Notice to call a Defendant on Recognizance to appear for Sentence.

In the High Court of Justice,
Queen's Bench Division.

[*Middlesex.*]—The Queen
against
A. B.

Take notice that the Queen's Bench Division of Her Majesty's High Court of Justice will be moved on the day of 188 , or so soon after as counsel can be heard for the judgment of the said Court against the above-named Defendant for certain [*conspiracies*] whereof he (with others) is indicted, and by a jury of the country [*or* by his own default *or* confession. *as the case may be*] convicted. And that he, the said Defendant, is hereby required personally to attend the said Court, in order to receive judgment as aforesaid. And in case the said Defendant does not then attend, the said Court will be moved that his default may be recorded, and that the recognizance of the said Defendant and of his bail, entered into in this prosecution, be estreated into the Exchequer.

Dated, &c.

(Signed)
M. N.
[Solicitor for the Prosecutor.]

To *A. B.*, the above-named Defendant; and also to *C. D.*, of, &c., and *E. F.*, of, &c., his bail.

[NOTE.—See r. 177, *ante*, p. 75.]

No. 123.

Judgment for the Crown on Quo Warranto after Trial with a Jury.

In the High Court of Justice,
Queen's Bench Division.

[*Middlesex.*]—The Queen, on the relation of *A. B.*,
against
C. D.

15th April, 1886.

The information in this prosecution having, on the 12th and 13th days of April, 1886, been tried before the Honourable Mr. Justice with a [special] jury of the county of , and the jury having found [*state findings as in officer's certificate*], and the said Mr. Justice having ordered that judgment be entered for the Crown with costs [*or as the case may be*]: Therefore it is adjudged that the Defendant *C. D.* do not in any manner intermeddle with or concern himself about the office, liberties, privileges, and franchises in respect of which the said information has been filed, but that he be absolutely forejudged and excluded from exercising or using the same or any of them for the future. And that the said *A. B.*, the relator above-mentioned, do recover against the said *C. D.*, his costs in this behalf to be taxed.

The above costs have been taxed and allowed at *l.*, as appears by the master's allocatur dated the day of 1886.

[NOTE.—See r. 134, *ante*, p. 57.]

No. 124.

Judgment for the Crown on Mandamus after Trial with a Jury.

In the High Court of Justice,
Queen's Bench Division.

[*Insert name of county.*]—The Queen, on the prosecution of
A. B., Plaintiff,
against
C. D., Defendant.

30th March, 1886.

The issue on this writ of Mandamus having on the day of 1886, been tried before the Honourable Mr. Justice , with a [special] jury of the county of and the jury having found [*state findings as in officer's certificate*] and the said Mr. Justice having ordered that judgment be entered for the Crown with costs [*or as the case may be*]. Therefore it is adjudged that a peremptory writ of Mandamus be awarded in this behalf, and that the Plaintiff do recover against his costs to be taxed.

The above costs have been taxed and allowed at *l.*, as appears by the master's allocatur dated the day of 1886.

No. 125.

Attorney General's Fiat for Writ of Error on Indictment at Sessions.

[*County.*]—Let a writ of Error, on behalf of the Defendant *A. B.*, issue directed to the keepers of the peace and justices assigned to hear and determine divers crimes, trespasses, and other offences committed in the county of upon a certain indictment against the said *A. B.* for certain

[misdemeanors] whereof he was before them indicted, and by a jury of the county aforesaid convicted. And whereupon judgment has been pronounced against him the said *A. B.*

Returnable in the Queen's Bench Division of Her Majesty's High Court of Justice.

Dated, &c.

(Signed)
RICHARD WEBSTER,
(Attorney General.)

If indictment at borough sessions say :—

Directed to *X. Y.*, Esquire, the recorder of the borough [*or* city] of in the county of , our justice assigned, &c.

[NOTE.—See r. 184, *ante*, p. 77.]

No. 126.

Writ of Error to Inferior Court.

VICTORIA, by the Grace of God, &c., to Our keepers of the peace and Our justices assigned to hear and determine divers crimes, trespasses, and other offences committed within Our county of [*or* to *F. P.*, Esquire, Recorder of Our borough of , in the county of , Our justice assigned, &c., *or if assizes say*, Our justices of Oyer and Terminer in and for Our county of , *or if Central Criminal Court say*, Our justices of the Central Criminal Court], greeting : Forasmuch as in the record and proceedings and also in the giving of judgment in a certain presentment made against *E. F.* at a sessions of the peace in and for the said county of [*or* said borough of] [held by adjournment, *if so*] at on [Tues] day the day of in the year of our Lord one thousand eight hundred and eighty-six, before [*insert the names of some of the justices*] and others their associates, then Our justices assigned to keep the peace in Our said county, and also to hear and determine divers crimes, trespasses, and other offences in the said county committed [*or* before the said *F. P.*, Our recorder assigned, &c. *If the indictment was tried at the assizes or Central Criminal Court this recital must be varied according to the caption of the indictment*] for certain felonies [*or* misdemeanors] in [*here shortly describe the nature of the offence*] whereof the said *E. F.* was accused before the said [*here repeat description of Court as above*] and was thereupon convicted thereof by a certain jury of the country taken between Us and the said *E. F.*, as it is said, manifest error hath intervened to the great damage of the said *E. F.*, as by his complaint We are informed. We being willing that the said error (if any there be) should in due manner be corrected, and full and speedy justice done to the said *E. F.* in this behalf, do command you that if judgment be thereupon given, then you send to Us distinctly and openly under your seals or the seal of one of you, the record and proceedings aforesaid, with all things concerning the same, with this writ, so that We may have them before Us on the day of next, in the Queen's Bench Division of Our High Court of Justice at the Royal Courts of Justice, London, that the record and proceedings aforesaid being inspected, viewed, and examined, We may cause further to be done thereupon for correcting that error, what of right and according to the law and custom of Our realm of England ought to be done. Witness Ourself at Westminster the day of in the year of Our reign.

(Signed)
ESHER,
(Master of the Rolls).

Indorsement.

By Sir Richard Webster, Knight, Attorney General for Our Lady the Queen.

[NOTE.—See r. 183, and note thereto, *ante*, p. 77.]

No. 127.

Recognizance to prosecute Writ of Error.

Be it remembered, that on the day of , 188 , *T. H.*, late of , in the county of , but now a prisoner in the custody of [the gaoler of Her Majesty's prison at , in and for the county of], and *H. K.*, of [*merchant*], and *F. S.*, of [*farmer*], come before me [one of Her Majesty's justices of the peace for the county of (*or as the case may be*)], and acknowledge to owe to our Sovereign Lady the Queen the several sums following; that is to say, the said *T. H.* the sum of pounds, and the said *H. K.* and *F. S.* the sum of pounds each, of lawful money of Great Britain, to be levied upon their several goods and chattels, lands and tenements, to Her Majesty's use, upon condition that the said *T. H.* do prosecute with effect a writ of Error [*or* Appeal to the House of Lords; *or*, *if writ not obtained*, any writ of Error which may hereafter be] issued to reverse the judgment given against the said *T. H.* at [*the last general quarter sessions of the peace in and for the county, holden at on or as the case may be*], upon an indictment for certain misdemeanors, and personally to appear in the Queen's Bench Division of Her Majesty's High Court of Justice [*or* in Her Majesty's Court of Appeal] on the day whereon judgment shall be given upon the said writ of Error. And also, if so ordered by the said last-mentioned Court or by a Judge thereof, four days' notice being given either to the said *T. H.* or his solicitor, or to the bail personally, or by leaving the same at his or their last-known place of abode, on the days and times appointed for any proceedings upon the said writ of Error, and so from day to day and not to depart that Court without leave, and forthwith to render the said *T. H.* to prison according to the said judgment, in case the said judgment shall be affirmed, then this recognizance to be void or else to remain in full force.

Taken, &c.

[NOTE.—See rr. 179, *ante*, p. 75, 199, 200, *ante*, pp. 80, 81.]

No. 128.

Affidavit for Habeas Corpus to assign Errors.

In the High Court of Justice,
Queen's Bench Division.

(*Lincolnshire.*)

A. B., Plaintiff in Error,
against
The Queen, Defendant in Error.

I, *C. D.*, of make oath and say:—

1. That at [*the general quarter sessions of the peace*], held at in and for the county of , *A. B.* was convicted upon an indictment against him for and sentenced by the said Court of [*quarter sessions*], to be [imprisoned, *or as the case may be*].

2. That a writ of Error has been granted by the Attorney General, and issued, returnable in this Court on the day of , 188 .

3. That the said *A. B.* is now in custody of the gaoler of the prison at [*as the case may be*]. And that it is necessary that the said *A. B.* should be brought before this honourable Court in order that he may assign errors on the return of the said writ.

Sworn, &c.

[NOTE.—See r. 187, *ante*, p. 78.]

No. 129.

Assignment of Errors.

[*Heading as in No.* 128.]

And now, that is to say, on the day of , in the year of our Lord one thousand eight hundred and eighty-six, before our said Lady the Queen, at the Royal Courts of Justice, London:

Comes the said *A. B.* [in his own proper person], *or*, by [*C. D.*, his solicitor], and says, that in the record and proceedings aforesaid, and also in the giving of the judgment against the said *A. B.*, there is manifest error in this, to wit:—That [*here set out the first cause of error*] therefore in that there is manifest error. There is also error in this, to wit: That [*set out the second cause of error, and so on, specifying all the assignments of error, commencing and concluding each assignment in the same form as above; and lastly, as general assignments, may be added as follows*]: There is also error in this, to wit: That the indictment and proceedings aforesaid and the matters therein contained are not sufficient in law to warrant the said judgment so given against the said *A. B.*, or to convict him of the trespasses, contempts, nuisances, or offences aforesaid [*as the case may be*], or any or either of them, therefore in that there is manifest error. There is also error in this, to wit: That the judgment aforesaid in form aforesaid is given for our said Lady the Queen. Whereas the said judgment by the law of this realm ought to have been given against our said Lady the Queen and for the said *A. B.*, therefore in that there is manifest error, and the said *A. B.* prays that the judgment aforesaid for the said errors, and other errors appearing in the record and proceedings aforesaid may be reversed, annulled, and wholly held for nothing, and that he may be restored to all things which by reason of the judgment and proceedings aforesaid he has lost.

(Signed) *X. Y.*

[Note.—See rr. 187, 188, 189, 191, *ante*, pp. 78, 79.]

No. 130.

Joinder in Error.

[*Heading as in No.* 128.]

And Frederick Cockburn, Esquire, coroner and attorney of our said Lady the Queen, in the Queen's Bench Division of Her Majesty's High Court of Justice, before the Queen herself, who for our said Lady the Queen in this behalf prosecutes, being present here in Court and having heard the matters aforesaid above assigned for error in manner and form aforesaid for our said Lady the Queen says, that neither in the record and proceedings aforesaid nor in the giving of judgment aforesaid is there any error, therefore the said coroner and attorney of our said Lady the Queen, for our said Lady the Queen, prays that the Court now here may proceed to examine as well the record and proceedings aforesaid and the judgment thereon given as aforesaid, as the matters above assigned and alleged for error, and that the judgment aforesaid may in all things be affirmed.

[Note.—See rr. 192, 195, *ante*, pp. 79, 80.]

No. 131.

Entry of Judgment of Affirmance on Writ of Error.

Whereupon the Queen's Bench Division of Her Majesty's High Court of Justice, before the Queen herself, now here having seen and fully understood all and singular the premises aforesaid, and having examined and inspected as

well the record and proceedings aforesaid, and the judgment thereon given as aforesaid, as the matter above assigned and alleged for error, it appears to the Court here, that neither in the record and proceedings aforesaid, nor in giving the judgment aforesaid, is there any error. Therefore, it is considered and adjudged by the said Court here, that the said judgment be in all things affirmed.

No. 132.

Entry of Reversal of Judgment on Writ of Error.

[*As in Form* 131 *to the words* "it appears"] to the said Court here, that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error. Therefore, it is considered and adjudged by the said Court here, that the judgment aforesaid for the errors aforesaid, and for other errors, appearing on the record and proceedings aforesaid, be reversed, annulled, and altogether held for nothing. And that the said *T. B.* be restored to all things which by reason of the judgment and proceedings aforesaid he has lost, and that he depart hence without day in this behalf.*

* In misdemeanor when the judgment of the Court below is amended, vary this form accordingly

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No. 133.

Entry of Judgment for want of Joinder in Error.

Whereupon all and singular the premises being seen and fully understood by the Queen's Bench Division of Her Majesty's High Court of Justice now here, for that no one comes on behalf of our said Lady the Queen further to inform the Court here of the premises, or to join in error with the said *A. B.*, it is considered and adjudged by the said Court here that the record and proceedings aforesaid, and the judgment thereupon given, for the errors assigned, and for other errors appearing in the said record and proceedings be reversed and annulled, and that the said *A. B.* be restored to all that he has lost on occasion of the said judgment, and that he depart hence without day in this behalf.

No. 134.

Attorney General's Fiat for Writ of Error on Information, or Indictment, in Queen's Bench Division, &c.

[*Here insert name of county.*] Let a writ of Error on behalf of *E. Y.*, issue directed to the Right Honourable John Duke, Baron Coleridge, Lord Chief Justice of England, and the Honourable the other justices of Her Majesty's High Court attached to the Queen's Bench Division, upon a certain information [*or* indictment] filed in the said Queen's Bench Division, against the said *E. Y.* for certain misdemeanors whereof he is impeached [*or* indicted] and by a jury of the county aforesaid [*or* for want of a sufficient plea] convicted, as it is said. And whereupon judgment has been pronounced against him.

Dated, &c.

[NOTE.—See r. 207, *ante*, p. 84.]

No. 135.

Writ of Error on Information filed, or Indictment found, in Queen's Bench Division.

VICTORIA, by the Grace of God, &c.

To Our right trusty and well-beloved John Duke, Baron Coleridge, Our Chief Justice of England, the President, and others Our Justices of Our High Court attached to the Queen's Bench Division of Our said High Court, greeting: Forasmuch as in the record and proceedings and also in the giving of judgment upon a certain information exhibited in [*or* upon a certain indictment found and filed in*] Our said Court before us against *J. W.*, for certain [misdemeanors], whereupon by a jury of the [county of Middlesex] taken between Us and the said *J. W.* before [you the said John Duke, Baron Coleridge, Our Chief Justice aforesaid] [*or if before some other judge here insert his name*] he is convicted, as it is said, manifest error has intervened to the great damage of the said *J. W.*, as by his complaint We are informed. We, therefore, being willing that the said error (if any there be) be duly amended, and full and speedy justice done to the said *J. W.* in this behalf, do command you that if judgment be given thereupon, then you send to Us distinctly and openly forthwith under your seal, or the seal of one of you to Our Lords Justices of Appeal in Our Court of Appeal, a transcript of the record and proceedings of the information [*or* indictment] aforesaid, with all things touching the same and this writ, that the said transcript and proceedings being inspected, viewed and examined by Our Lords Justices of Appeal aforesaid, they may cause further to be done thereupon what of right, and according to the law and custom of England shall be meet to be done. Witness Ourself at Westminster the day of , in the year of Our reign.

(Signed)
ESHER,
(Master of the Rolls.)

Indorsement as in No. 126.

**If the writ of Error be upon an indictment removed by Certiorari:—*

upon a certain indictment against *A. B.* for certain [misdemeanors] whereof before Our keepers of the peace and justices assigned to hear and determine divers crimes, trespasses, and other offences committed in Our county of at the general quarter sessions of the peace held in and for the said county on the day of he was indicted, and which said indictment We afterwards for certain reasons caused to be brought before Us in the Queen's Bench Division of Our High Court of Justice to be determined according to the law and custom of England. Whereupon, &c.

**If the writ of Error be upon a judgment affirming on error the judgment of an Inferior Court:—*

upon a certain indictment against *A. B.* for certain [misdemeanors] whereof before Our keepers of the peace and justices assigned to hear and determine divers crimes, trespasses, and other offences committed in Our county of at the general quarter sessions of the peace held in and for the said county on the day of in the year of Our Lord, &c., he was indicted, and by a jury of the said county convicted, and by reason of an alleged error the record and proceedings were removed into the said Queen's Bench Division, where the judgment aforesaid was affirmed, as it is said manifest error has thereby intervened to the great damage of the said *A. B.* as by his complaint we are informed.

[NOTE.—See r. 207, *ante*, p. 84.]

No. 136.

Memorandum of Allowance of Writ of Error.

In the High Court of Justice,
Queen's Bench Division.

[*Middlesex.*] The Queen
against
A. B.

I have allowed a writ of Error in this prosecution this day of , 188 .

(Signed)
C. D.
[*Title of Officer*].

[NOTE.—See r. 209, *ante*, p. 85.]

No. 137.

Statement of some particular Ground of Error to be engrossed on copy of above for service.

One of the grounds of error intended to be argued [*here state particular ground*].

[NOTE.—See r. 209, *ante*, p. 85.]

No. 138.

Writ of Fieri Facias on Order for Costs.

VICTORIA, by the Grace of God, &c., to the sheriff of , greeting: We command you that of the goods and chattels of *A. B.* in your bailiwick, you cause to be made the sum of for certain costs which by an order of the Queen's Bench Division of Our High Court of Justice, dated the day of , 188 , were ordered to be paid by to and which have been taxed and allowed at the said sum, as appears by the allocatur of one of the taxing-masters, together with interest on the said sum at the rate of £4 per centum per annum from the day of 188 ,* and that you have the said money before Us in Our said Court immediately after the execution hereof to be rendered to the said for his costs as aforesaid, and how you shall have executed this Our writ then and there make known to Us in Our said Court immediately after the execution thereof, and have then there this Our writ.

Witness, &c.

* Date of judgment or order.

To be indorsed.

Levy *l.* and *l.* for costs of execution, &c., and also interest on *l.* at 4*l.* per centum per annum, from the day of , 188 , until payment, besides sheriff's poundage, officers' fees, costs of levying, and all other legal incidental expenses.

This writ was issued by *M. N.*, of *L.*, agent for *G. H.*, of *Y.*, solicitor for who resides at .

The within-named *A. B.* is a , and resides at in your bailiwick.

[NOTE.—As to teste, see r. 231, *ante*, p. 106; as to return, r. 221, *ante*, p. 95.]

No. 139.

*Writ of Fieri Facias on Judgment with Order for Costs.**

VICTORIA, by the Grace of God, &c., to the sheriff of greeting: We command you that of the goods and chattels of in your bailiwick you cause to be made the sum of and also interest thereon, at the rate of 4*l.* per centum per annum from the † day of , 188 , which said sum of money and interest were lately before Us, in the Queen's Bench Division of Our High Court of Justice, in a certain ‡ wherein *A. B.* is the prosecutor (*or as the case may be*) and *C. D.* the defendant, by a § of Our said Court, bearing date the day of , 188 , ‖ to be paid by the said to for costs in the said § mentioned, and which costs have been taxed and allowed at the sum of as appears by the allocatur of one of the taxing-masters, dated the day of 188 . And that you have that money and interest before Us in Our said Court immediately after the execution hereof, to be paid to the said in pursuance of the said § and in what manner you shall have executed this Our writ, make known to Us in Our said Court immediately after the execution thereof. And have there then this writ.

Witness, &c.

Indorsement as in No. 138.

* This writ must be so moulded as to follow the substance of the order or judgment.

† Date of judgment o order.

‡ Indictment, information (in the nature of a quo warranto), action of mandamus, or matter there depending, intituled "In the matter of &c.," or as the case may be.

§ "Judgment," or "order."

‖ "Adjudged," "awarded," or "ordered."

No. 140.

Writ of Fieri Facias on an Order of Quarter Sessions removed into the Crown Side of the Queen's Bench Division.

VICTORIA, by the Grace of God,'&c., to the sheriff of greeting: We command you that of the goods and chattels of *C. D.* in your bailiwick you cause to be made the sum of [50*l.*] for certain costs which by an order of the general quarter sessions of the peace holden in and for the said county of on the day of made in a certain appeal wherein *A. B.* was appellant, and the said *C. D.* was respondent, were adjudged to be paid by the said *C. D.* to the said *A. B.*, and which order of quarter sessions was afterwards on the day of , removed into the Queen's Bench Division of our High Court of Justice by virtue of an order of the Honourable Mr. Justice , made the day of 188 , in pursuance of the statute in such case made and provided, and the costs attendant upon the application for the said last-mentioned order, and upon the said removal were on the day of 188 , taxed and allowed at the sum of [9*l.*], as appears by the allocatur of one of the taxing-masters dated the day of 188 , and We further command you that of the goods and chattels of the said *C. D.* in your bailiwick you further cause to be made the said sum of [9*l.*] together with interest at the rate of 4*l.* per centum per annum from the said day of *; and that you have that money and interest before Us in Our said Court immediately after the execution hereof, to be paid to the said *A. B*

* The date of the order.

in pursuance of the said orders. And in what manner you shall have executed this Our writ make known to Us in Our said Court immediately after the execution thereof, and have then there this writ.

Witness, &c.

[NOTE.—Orders of Sessions are removed into the Q. B. D. under 12 & 13 Vict. c. 45, s. 18, for the purpose of being enforced.]

No. 141.

Writ of Elegit.

VICTORIA, by the Grace of God, &c.

To the sheriff of , greeting:

Whereas, lately in the Queen's Bench Division of Our High Court of Justice in a certain * wherein *A. B.* is † and *C. D.* is Defendant, by a ‡ of Our said court, made in the said * and bearing date the day of 188 , it was § that the said should pay unto certain costs as in the said ‡ mentioned, and which costs have been taxed and allowed at the sum of £ as appears by the allocatur of one of the taxing-masters dated the day of , 188 .

And afterwards the said came into Our said Court, and according to the statute in such case made and provided chose to be delivered to him all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyholds or customary tenure in your bailiwick, as the said or any one in trust for him, was seized or possessed of on the ‖ day of or at any time afterwards or over which the said on the said day of 188 , or at any time afterwards had any disposing power which he might, without the assent of any other person, exercise for his own benefit to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof to him and to his assigns, until the said sum of £ ¶ together with interest upon the said sum at the rate of 4*l.* per centum per annum from the ‖ day of shall have been levied.

Therefore We command you that without delay you cause to be delivered to the said by a reasonable price and extent all such lands and tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure in your bailiwick as the said or any person or persons in trust for him, was or were seized or possessed of, on the said ‖ day of or at any time afterwards or over which the said on the said ‖ day of or at any time afterwards had any disposing power which he might, without the assent of any other person, exercise for his own benefit to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns, until the said two several sums and interest as aforesaid shall have been levied. And in what manner you shall have executed this Our writ make known to Us in Our Court aforesaid, immediately after the execution thereof, under your seal and the seals of those by whose oath you shall make the said extent and appraisement. And have there then this writ.

Witness, &c.

* Indictment, information (in the nature of a quo warranto), action of mandamus, or matter there depending, intituled "In the matter of, &c.," or as the case may be.

† Prosecutor, Relator, Plaintiff, or Appellant, as the case may be.

‡ "Judgment," or "order."

§ "Adjudged," "awarded," or "ordered."

‖ Date of judgment or order.

¶ Costs.

To be indorsed.

Levy £ and £ for costs of execution, besides costs of inquisition, if any; and also interest on £ at 4*l.* per centum per annum from

the day of 188 , until payment, besides sheriff's poundage, officer's fees, costs of levying, and all other legal incidental expenses.

This writ was issued by *M. N.*, of *L.*, agent for *G. H.*, of *Y.*, solicitor for who resides at .

The within-named *A. B.* is a and resides at in your bailiwick.

No. 142.

Other Writs of Execution.

When required, the Forms in Appendix H. to the Rules of the Supreme Court may be adapted with the necessary alterations.

No. 143.

Writ of Levari Facias against Inhabitants, &c., upon Conviction and Fine.

VICTORIA, by the Grace of God, &c.

To the sheriff of , greeting: Whereas sometime, that is to say, on the day of 188 , at [*the assizes, &c. Here recite the caption of the indictment*] by the oath of twelve jurors, good and lawful men of the said county of then and there sworn and charged to inquire for Us and the body of the said county.

It was presented as follows, that is to say:

[*Set out the indictment.*]

Which said indictment we afterwards, for certain reasons, caused to be brought before Us, to be determined, according to the law and custom of England, and such proceedings were thereupon had in Our Court before Us, upon the said indictment, that the inhabitants of the said parish of by a jury of the country, taken between Us and the said inhabitants, stand convicted of the trespasses and nuisances above specified, and charged upon them, in and by the said indictment in manner and form as in and by the said indictment is alleged against them; and whereas it has thereupon been considered and adjudged in the Queen's Bench Division of Our High Court of Justice before Us, that the inhabitants of the said parish, for their offences aforesaid, should pay a fine of £ of lawful money of Great Britain, [*according to the order of court for fine*], and that such fine should be paid into the hands of of to be by him applied, pursuant to the directions of the statute, in such case made and provided, as in Our said Court, before us, it appears upon record. We therefore command you, that of the goods and chattels, lands and tenements of the said inhabitants of the said parish of you levy, and cause to be levied, the said sum of £ being the fine so imposed upon them, in Our said Court, before Us, for their said offences whereof they are indicted and convicted, as aforesaid, and that you pay the said fine, when levied, into the hands of the said , to be by him applied to the repair of the said *several* highways, so as aforesaid, in decay and out of repair, pursuant to the directions of the statute, in such case made and provided; and how you shall have executed this Our writ, make known to Us in Our said last-mentioned court immediately after the execution thereof. And have then there this writ.

Witness, &c.

This writ was issued by .

No. 144.

Writ of Capias ad Satisfaciendum after Judgment.

VICTORIA, by the Grace of God, &c., to the sheriff of greeting: We command you that you take *A. B.*, if he shall be found in your bailiwick, and him safely keep, so that you may have his body before Us in the Queen's Bench Division of Our High Court of Justice, on the day of , 188 , to satisfy Us concerning his redemption by reason of certain whereof he is indicted, and thereupon by a jury of the country taken between Us and the said *A. B.* [*or* by his own default *or* confession] he stands convicted, as in Our said Court before Us it appears upon record. And have you then there this writ. Witness, &c.

[NOTE.—See r. 176, *ante*, p. 75.]

No. 145.

Writ of Fieri Facias for a Fine.

VICTORIA, by the Grace of God, &c., to the sheriff of , greeting: We command you that of the goods and chattels, lands and tenements of *A. B.*, you cause to be levied pounds, imposed upon him in the Queen's Bench Division of Our High Court of Justice before him for his fine, for certain whereof he is impeached [*or* indicted], and thereupon, by a certain jury of the country [*or* by his own default, *or* confession], he stands convicted, as in Our Court before Us it appears upon record. And that you have the said money before Us in Our said Court immediately after the execution thereof, to satisfy Us for the said fine. And that you then have there this writ. Witness, &c.

No. 146.

Writ of Distringas against Inhabitants after Conviction for not Repairing a Highway.

VICTORIA, by the Grace of God, &c., to the sheriff of , greeting: Whereas some time ago, that is to say, on, &c., at, &c., before, &c. [*recite the caption and the indictment*], which said indictment we did afterwards, for certain reasons, cause to be brought before Us in the Queen's Bench Division of the High Court of Justice to be determined according to the law and custom of England. And whereas afterwards such proceedings were had in Our said Court before Us on the said indictment, that the inhabitants of the said by a certain jury of the country taken between us and the said inhabitants [*or* by their own default] stand convicted of the nuisances above mentioned and specified and charged upon them in the indictment aforesaid, in manner and form as in and by the said indictment is above alleged against them. And whereas thereupon it has been considered and adjudged by Our said Court before Us that the said inhabitants of should be distrained for the nuisances aforesaid, as in Our said Court before Us it appears upon record. We therefore command you that you distrain the inhabitants of the parish aforesaid in your said county by all their lands and chattels in your bailiwick, so that neither they nor any one for them do put their hands to the same until you shall have another command from Us for that purpose. And that you answer to Us for the issues thereof, so that they, the inhabitants of the said parish, may, at their own proper costs and charges, well and sufficiently repair and amend that part of the said common and ancient

Queen's highway so out of repair as aforesaid, if before it shall not be repaired and amended by them. And how you shall execute this Our writ make known to Us in Our said last-mentioned Court immediately after the execution thereof. And have then there this writ. Witness, &c.

No. 147.

Writ of Abatement or Nocumento Amovendo.

VICTORIA, by the Grace of God, &c., to the sheriff of , greeting: Whereas, on the day of , at , &c. [*recite the caption of the indictment and the indictment*]. Which said indictment We afterwards, for certain reasons, caused to be brought before Us in the Queen's Bench Division of Our High Court of Justice, to be determined according to the law and custom of England. And whereas thereupon afterwards, that is to say, at the assizes holden at in and for the county of , on the day of 188 , before and , justices, &c., upon the trial of the issue joined between Us and the said *R. W.*, he, the said *R. W.*, was in due manner convicted of the matters contained in the said indictment, in manner and form as in and by the said indictment was alleged against him, as in the said Queen's Bench Division before Us it more fully appears upon record. Whereupon, on the day of 188 , it was adjudged and ordered by Our said Court before Us, that the said *R. W.* for the nuisances aforesaid charged upon him by the said indictment, whereof he was so convicted as aforesaid, should pay a fine of . And that such nuisances should be abated as in Our said Court before Us, it also appears upon record. We therefore command you, that the said so erected and built upon the said highway, at the parish of , in the said county of . And so as aforesaid continued, as in the said indictment mentioned, you do without delay remove, or cause to be removed, and how you shall execute this Our writ, make known to Us in Our said Court immediately after the execution thereof, and have then there this writ. Witness, &c.

No. 148.

Writ of Restitution.

VICTORIA, by the Grace of God, &c., to the sheriff of , greeting: Whereas some time ago, that is to say, on [*copy the caption of the indictment and the indictment*] which said indictment We did afterwards, for certain reasons, cause to be brought before Us in the Queen's Bench Division of Our High Court of Justice, to be determined according to the law and custom of England. And whereas such proceedings were afterwards had in Our said Court before Us, upon the said indictment, that the said by a jury of the country taken between Us and the said stands convicted of the premises in the indictment above specified and charged upon him, in manner and form as in and by the said indictment is within alleged against him, as in Our said Court before Us it appears upon record. We therefore, being willing that due and speedy justice should be done in the premises, do command you that you cause to be reseised and restored to the said the aforesaid messuage, with the appurtenances, situate in the parish of , in the said indictment specified. And that you do

without delay, cause the said to be put into full possession thereof. And how you shall have executed this Our writ, make known to Us in Our said Court immediately after the execution thereof. And have then there this writ. Witness, &c.

No. 149.

Writ of Levari Facias on Conviction Affirmed.

VICTORIA, by the Grace of God, &c.

To the sheriff of , greeting: Whereas *I. G.* was heretofore, to wit, on the day of 188 , at , on the complaint of , convicted by and before [*here recite the conviction*]. And whereas the said *I. G.* having appealed to the then next General Quarter Sessions of Our peace, holden at in and for Our said county of , against the record of the said conviction, the same was by the Court of General Quarter Sessions aforesaid, rectified and confirmed. And whereas the said record of conviction, and the proceedings had thereon as aforesaid, were afterwards, by virtue of Our writ of Certiorari issued in that behalf brought before Us in the Queen's Bench Division of Our High Court of Justice that we might cause further to be done thereon what of right and according to the law and custom of England, We should see fit to be done, as appears to Us of record. And thereupon it was considered and adjudged by Our said Court before Us that the said record of conviction, and also the said order so made by the said Court of Quarter Sessions as aforesaid, should be affirmed, as in Our said Court before Us it also appears on record. We therefore command you, that of the goods and chattels, lands and tenements of the said *I. G.* in your bailiwick you cause to be levied the sum of so adjudged to have been forfeited as aforesaid by the said *I. G.*, and that you have the said money before Us in Our said Court at the Royal Courts of Justice, London, immediately after the execution of this Our writ to go and be applied according to the directions of the statute in such case made and provided. And have then there this writ. Witness, &c.

To be indorsed By order of Court.

No. 150.

Second Writ of Levari Facias on Conviction affirmed for Residue where Part levied.

VICTORIA, by the Grace of God, &c.

To the sheriff of , greeting: Whereas [*here recite the conviction as in the first writ* (*No.* 149), *and the first writ and return*]. As by the return of the [*then*] sheriff to the said writ of Levari Facias in Our said Court before Us, it also appears upon record. We therefore command you that of the goods and chattels, lands and tenements of the said in your bailiwick, you cause to be levied the sum of residue of the said sum of so adjudged to have been forfeited as aforesaid, by the said , and that you have the said sum of , residue of the said sum of , before Us in Our said Court at the Royal Courts of Justice, London, immediately after the execution of this Our writ to go [*&c., as in No.* 149].

No. 151.

Writ of Subpœna ad Testificandum or Duces Tecum; General Form.

VICTORIA, by the Grace of God, &c., to and to every of them, greeting: We command you and every of you, that laying aside all excuses and pretences whatsoever, you and every of you personally be and appear before on the day of instant [*or* next] at the hour of in the noon at in Our said there to testify the truth and give evidence.

*

And this you or any of you are not to omit, under the penalty of one hundred pounds, to be levied on the goods and chattels, lands and tenements of such of you as shall fail herein. Witness, &c.

* *If duces tecum, here add:* And that you or such of you in whose custody or power the same be do bring with you and produce before [Our justice or justices] aforesaid [*here describe the document, &c.*].

To be indorsed.

This writ was issued by *M. N., of L.*, agent for *G. H.*, of *Y.*, solicitor for the Prosecutor [*or* Defendant].

[NOTE.—As to indorsement see r. 230, and as to teste, r. 231, *ante*, pp. 105, 106.]

No. 152.

Writ of Subpœna before Grand Jury in the Queen's Bench Division.

VICTORIA, by the Grace of God, &c., to and to every of them, greeting: We command you and every of you, that laying aside all excuses and pretences whatsoever, you and every of you personally be and appear before Us in the Queen's Bench Division of Our High Court of Justice on the day of instant [*or* next] at the hour of in the forenoon at the Royal Courts of Justice, London, there to testify the truth and give evidence to and before the Grand Jury of and for Our said county of Middlesex on Our behalf against upon an indictment for certain misdemeanors [*or* felonies]. And this you or any of you are not to omit, under the penalty of one hundred pounds, to be levied on the goods and chattels, lands and tenements, of such of you as shall fail herein. Witness, &c.

No. 153.

Writ of Subpœna at Sittings of High Court.

VICTORIA, by the Grace of God, &c., to and to every of them, greeting: We command you and every of you, that laying aside all excuses and pretences whatsoever, you and every of you personally be and appear at the [*Hilary, or as the case may be*] Sittings of the Queen's Bench Division of Our High Court of Justice to be holden at the Royal Courts of Justice, London, on the day of at the hour of in the forenoon of the same day, and so from day to day during the said sittings until the indictment [*or* information] hereinafter mentioned is tried, there to testify the truth and give evidence, [*if for prosecution* on Our behalf against *A. B.* *If for the defence* between Us and *A. B.*], upon an indictment [*or* information] for felony [*or* misdemeanor] [*and if for defence add:* on behalf

of the Defendant], and so from day to day during the said sittings until the above indictment [*or* information] is tried.

*

And this you or any of you are not to omit, under the penalty of one hundred pounds, to be levied on the goods and chattels, lands and tenements of such of you as shall fail herein. Witness, &c.

* *If duces tecum, here add:* And that you or such of you in whose custody or power the same be do bring with you and produce before Our Court aforesaid [*here describe the document, &c.*]

No. 154.

Writ of Subpœna at Assizes on the Civil Side.

VICTORIA, by the Grace of God, &c., to and to every of them greeting: We command you and every of you, that laying aside all excuses and pretences whatsoever, you and every of you personally be and appear before Our justices assigned to hold the assizes in and for Our [county] of on the day of at the hour of in the forenoon, at in Our said county, there to testify and give evidence [*as in No.* 153, *substituting assizes for sittings*].

No. 155.

Writ of Subpœna on Trial of Issues on Quo Warranto Information.

[*As in No.* 153 *or No.* 154.]

But instead of "upon an indictment for" say: upon an information in the nature of a Quo Warranto exhibited against him the said in the [said] Queen's Bench Division of Our High Court of Justice before Us, to show by what authority he claims to be whereof he is impeached.

No. 156.

Writ of Subpœna on Trial of Issue on Mandamus.

[*As in No.* 153 *or No.* 154.]

And after the word "evidence" insert:
between the Queen on the prosecution of *A. B.*, Plaintiff, and *C. D.* and *E. F.*, &c., Defendants, upon the trial of certain issues joined between the said parties, upon the return to Our writ of Mandamus lately issued out of the [said] Queen's Bench Division of Our High Court of Justice directed to the said commanding them [*or* him] to [*here shortly set out mandatory part of writ*] on behalf of the Plaintiff [*or* Defendant].

No. 157.

Writ of Subpœna at Assizes in the Crown Court.

VICTORIA, by the Grace of God, &c., to and to every of them, greeting: We command you and every of you, that laying aside all excuses and

pretences whatsoever, you and every of you personally be and appear before * Our justices of oyer and terminer, and general gaol delivery,† and justices assigned to hold the assizes in and for Our [county] of on the day of at the hour of in the forenoon, at in Our said [county], there to testify the truth, and give evidence [*if for the prosecution*] on Our behalf against *A. B.*, [*or if for defence* between Us and *A. B.*] upon an indictment for felony [*or* misdemeanor] on behalf of the Defendant [*if so*], and so from day to day during the said assizes until the above cause is tried.

And this you or any of you are not to omit under the penalty of one hundred pounds to be levied on the goods and chattels, lands and tenements, of you or such of you as shall fail herein.

Witness, &c.

* *Or if before the Grand Jury*, before the Grand Jury of and for Our said county, on Our behalf against *A. B.* upon an indictment for felony [*or* misdemeanor], and also upon the trial of the said *A. B.* for the said offence.

† *If for winter or spring assize counties, say:* in and for Our winter [*or* spring] assize county, No. [seventeen] *and omit* "*and justices assigned, &c.*"

No. 158.

Writ of Subpœna at Central Criminal Court.

VICTORIA, by the Grace of God, &c., to and to every of them, greeting: We command you and every of you, that laying aside all excuses and pretences whatsoever, you and every of you personally be and appear before Our justices of oyer and terminer and gaol delivery, at the sessions of oyer and terminer and gaol delivery, to be holden for the jurisdiction of the Central Criminal Court, at Justice Hall in the Old Bailey, in the suburbs of Our City of London, on the day of at the hour of in the forenoon of the same day, there to testify the truth and give evidence [*as in No.* 157].

No. 159.

Writ of Subpœna at Quarter Sessions.

VICTORIA, by the Grace of God, &c., to and to every of them, greeting: We command you and every of you, that laying aside all excuses and pretences whatsoever, you and every of you personally be and appear before * the keepers of Our peace and Our justices assigned to hear and determine divers crimes, trespasses, and other offences committed within Our county of at the general quarter sessions of the peace to be held on the day of at the hour of in the forenoon of the same day, at in Our said county, there to testify the truth and give evidence [*as in No.* 157].

* *If city or borough sessions* before *D. K.*, Esquire, recorder of Our borough of in the county of Our justice assigned, &c.

No. 160.

Writ of Subpœna at Quarter Sessions in Appeal Cases.

VICTORIA, by the Grace of God, &c., to and to every of them, greeting: We command you and every of you that laying aside all excuses and pretences whatsoever, you and every of you personally be and appear before the

keepers of Our peace and Our justices assigned to hear and determine divers crimes, trespasses and other offences committed within Our county of at the general quarter sessions of the peace, to be held on the day of at the hour of in the forenoon of the same day, at in Our said county, there to testify the truth and give evidence upon an appeal

Between

[*The*] - - Appellants,

and

[*The*] - - Respondents.

Touching [*the last place of legal settlement of A. B., a poor person chargeable to the Poor Law Union*] on behalf of the Appellants [*or* Respondents].

Penalty as in 157.

Witness, &c.

No. 161.

Writ of Subpœna before Justices at Petty Sessions.

VICTORIA, by the Grace of God, &c., to and to every of them, greeting: We command you and every of you, that laying aside all excuses and pretences whatsoever, you and every of you personally be and appear before such of the keepers of Our peace and Our justices assigned to hear and determine divers crimes, trespasses, and other offences committed within Our county [*or* city, *or* borough, &c.] of , as may be in attendance at a petty sessions of the peace to be held on the day of at the hour of in the noon of the same day, at in our said county [*or* city, *or* borough, &c.] there to testify the truth and give evidence [*if for Complainant on criminal charge* *] on Our behalf against [*if for Defendant* between Us and] *A. B.* upon a charge of felony [*or* misdemeanor, *or* for certain offences against the statute made for] on behalf of the defendant [*if so*] and so from day to day until the said charge [*or* matter] is disposed of.

†

And this you or any of you are not to omit, under the penalty of one hundred pounds, to be levied on the goods and chattels, lands and tenements of such of you as shall fail herein. Witness, &c.

* *In other than criminal matters the nature of the case must be shortly stated, as for instance:* there to testify the truth and give evidence upon an application to be then and there made by *A. B.* for an order in bastardy against *C. D.* on behalf of the said *A. B.* [*or C. D.*].

† *If duces tecum add:* And that you or such of you in whose custody or power the same be do bring with you and produce before Our justices aforesaid [*here describe the document, &c.*].

No. 162.

Writ of Subpœna before a Metropolitan Police Magistrate.

[*As in No.* 161, *substituting the following direction.*]

personally be and appear before *T. B.*, Esquire, one of the magistrates of the police courts of the metropolis, sitting at the police court in the county of , and within the Metropolitan Police District, or such other magistrate of the said police courts as may then and there be present on the day of at the hour of in the noon, there, &c.

No. 163.

Writ of Subpœna before a Stipendiary Magistrate.

[*As in No.* 161, *substituting the following direction.*]

before *T. K.*, Esquire, stipendiary magistrate for the of , or such other of the keepers of Our peace and Our justices assigned to hear and determine divers crimes, trespasses, and other offences committed within Our of as may be in attendance at a petty session of the peace, to be held on the day of at the hour of in the forenoon of the same day, at in Our said there to testify the truth and give evidence, &c.

No. 164.

Writ of Subpœna before Lord Mayor of London at Mansion House.

[*As in No.* 161, *substituting the following direction.*]

before the Right Honourable John Staples, Lord Mayor of Our City of London, being one of the keepers of Our peace and justices assigned to hear and determine divers crimes, trespasses, and other offences committed within Our said City of London and the liberties thereof, or such other justice or justices of the peace of the said city as may then and there be present on the day of at the hour of in the forenoon of the same day, at the Mansion House Justice Room, within the said city, there, &c.

No. 165.

Writ of Subpœna before an Alderman at the Guildhall, London.

[*As in No.* 161, *substituting the following direction.*]

before Sir R. C. Knight, one of the aldermen of Our City of London, being one of the keepers of Our peace and justices assigned to hear and determine divers crimes, trespasses, and other offences committed within the said City of London and the liberties thereof, or such other justice or justices of the peace of the said city as may then and there be present on the day of at the hour of in the forenoon of the same day, at the Guildhall Justice Room, within the said city, there, &c.

No. 166.

Writ of Subpœna ad Test., before a Justice of the Peace.

VICTORIA, by the Grace of God, &c., to and to every of them, greeting: We command you and every of you that, laying aside all excuses and pretences whatsoever, you and every of you personally be and appear before , Esquire, one of the keepers of Our peace and justices in and for Our county of , or such other justice or justices of the peace of the said county as may be then and there present, on the day of , at the hour of in the noon, &c. [*at the public office*] at , in Our said county, there, &c.

No. 167.

Writ of Subpœna at General Annual Licensing Meeting.

VICTORIA, by the Grace of God, &c., to and to every one of them, greeting: We command you and every of you, that, laying aside all excuses and pretences whatsoever, you and every of you personally be and appear before such of the keepers of the peace and justices assigned to hear and determine divers crimes, trespasses, and other offences committed within Our of as may be assembled at the general annual licensing meeting to be holden [by adjournment, *if so*] for the division of , in the county of , at , in our said county, on the day of , at the hour of in the forenoon of the same day, there to testify the truth and give evidence touching an application to be then and there made by for [for the renewal of, *if so*] a licence to sell [*here insert description of licence*] on behalf of .
*

And this you or any of you are not to omit under the penalty of one hundred pounds, to be levied on the goods and chattels, lands and tenements of such of you as shall fail herein. Witness, &c.

* *If duces tecum, add:* And that you or such of you in whose custody or power the same be do bring with you and produce before Our justice or justices aforesaid [*here describe the document, &c.*].

No. 168.

Writ of Subpœna at Special Licensing Sessions.

VICTORIA, by the Grace of God, &c., to , and to every of them, greeting: We command you and every of you that, laying aside all excuses and pretences whatsoever, you and every of you personally be and appear before such of the keepers of Our peace and Our justices assigned to hear and determine divers crimes, trespasses, and other offences committed within Our [county] of as may be in attendance at a special sessions for licensing purposes to be holden in and for the division of Our said county pursuant to the statutes in that behalf on the day of , at the hour of in noon of the same day, there to testify the truth and give evidence touching an application by *A. B.* for a license to [*here insert description of license*], on behalf of [the said *A. B.*, *or as the case may be*].
*

And this you or any of you are not to omit under the penalty of one hundred pounds, to be levied on the goods and chattels, lands and tenements of such of you as shall fail herein. Witness, &c.

* *If duces tecum, add:* And that you or such of you in whose custody or power the same be do bring with you and produce before Our justices aforesaid [*here describe the documents, &c.*].

No. 169.

Writ of Supersedeas to Certiorari and Procedendo to carry back Indictment.

VICTORIA, by the Grace of God, &c., to [*to be directed and varied as the Certiorari*] and to every of them, greeting: Whereas by Our writ we lately commanded you and every of you, for certain reasons, that you should forth-

with send under your seals, or the seal of one of you, before Us in the Queen's Bench Division of Our High Court of Justice, at the Royal Courts of Justice, London, all and singular indictments of whatsoever whereof *A. B.* was indicted before you, as was said, with all things touching the same, by whatsoever name the said *A. B.* should be called therein, together with the said writ to you directed, that We might cause further to be done thereon what of right and according to the law and custom of England We should see fit to be done. We do now, for certain reasons, command you and every of you that you do wholly supersede whatever is to be done concerning the execution of that Our said writ. And that you proceed to the determination of the [*offences*] with that expedition which to you shall seem right and according to the law and custom of England, notwithstanding Our writ as before sent to you directed for that purpose. Witness, &c.

To be indorsed.

"By order of Court," *or*, "By order of Mr. Justice " [*as the case may be*].

This writ was issued by, &c.

No. 170.

Writ of Supersedeas to Certiorari and Procedendo to carry back Orders of Sessions.

VICTORIA, by the Grace of God, &c., to the keepers of Our peace and Our justices assigned to hear and determine divers crimes, trespasses, and other offences committed within Our county of , and to every of them, greeting: Whereas by Our writ We have lately commanded you and every of you, or one of you, should forthwith send under your seals, or the seal of one of you, before Us in the Queen's Bench Division of Our High Court of Justice at the Royal Courts of Justice, London, all and singular orders made by you, or some of you, between *the inhabitants of the parish of* , *in Our county of* , appellants, and *the inhabitants of the parish of* , *in Our county of* , respondents, touching *the settlement of* , as fully and perfectly as they had been made by you, or some of you, and then remained in the custody or power of you or any of you, together with that Our writ, that We might cause further to be done thereon what of right and according to the law and custom of England We should see fit to be done. We do for certain reasons Us thereunto moving, command you that you do wholly supersede whatsoever is to be done concerning the execution of that Our said writ. And that you proceed upon the said orders, in such manner as if the said writ had not issued. Witness, &c.

Indorsement as in No. 169.

No. 171.

Writ of Supersedeas to Distringas.

VICTORIA, by the Grace of God, &c., to the sheriff of , greeting: Whereas *A. B.* has appeared in the Queen's Bench Division of Our High Court of Justice, to an indictment against him for certain misdemeanors [*or* felonies]. We therefore command you, that you wholly supersede the distraining or otherwise molesting any longer the said *A. B.* on account of the premises aforesaid. And if you have distrained the said *A. B.*, that then you do without delay deliver or cause to be delivered to him that which you have

so distrained, if he be thereby distrained for the reasons aforesaid and no other, and this you are not to omit. Witness, &c.

[*Supersedeas to other writs of like nature must be directed according to the writ to be superseded. The recital must show a title to the supersedeas by stating that the Defendant has done that which the writ issued to compel him to do. And the mandatory part of the writ altered and varied according to the exigency of the case for which the same may be required.*]

No. 172.

Affidavit verifying Certified Copy of Commitment.

In the High Court of Justice,
Queen's Bench Division.

I, *A. B.*, of, &c., make oath and say :—

1. That I was present at Her Majesty's prison at , in and for the county of , on the day of , 188 , and did see *C. D.*, the gaoler of the said prison, sign the certificate written at the foot of the copy of the commitment of hereunto annexed, and that the name *C. D.*, set and subscribed thereto, is of the proper handwriting of the said *C. D.*

Sworn, &c.

[NOTE.—See r. 35, *ante*, p. 21.]

No. 173.

Gaoler's Certificate to be written at foot of Commitment.

I do certify that the above is a true copy of the warrant by virtue of which *E. F.* is detained in my custody. And that the said *E. F.* is not detained for any other cause [*if so*].

(Signed)
X. Y.
(Gaoler of H.M. prison at, &c.)

[*For the purpose of obtaining writs of Habeas Corpus to deliver and receive a prisoner, if it appears by the commitment that the prisoner must be tried in a different county or place than that in which he is detained, the above copy commitment, certificate, and affidavit are sufficient to obtain the writs. But if that fact does not so appear, an affidavit to that effect must also be supplied.*]

No. 174.

Summons for Writ of Habeas Corpus ad Subjiciendum.

In the High Court of Justice,
Queen's Bench Division.

The Honourable Mr. Justice , Judge in Chambers.

Upon reading the several affidavits of, &c. filed the day of , 188 , and upon hearing Mr. , of counsel [*or* the solicitor] for .

It is ordered that all parties concerned attend the Judge in Chambers on the day of , 188 , at the hour of in the

noon, to show cause why a writ of Habeas Corpus should not issue directed to to have the body of before a Judge in Chambers at the Royal Courts of Justice, London, forthwith to undergo, &c.

Dated, &c.

[NOTE.—See r. 237, *ante*, p. 108.]

No. 175.

Order for Writ of Habeas Corpus ad Subjiciendum.

In the High Court of Justice,
Queen's Bench Division.

The Honourable Mr. Justice , Judge in Chambers,

[*If in a cause on the Crown side, here insert the title, not otherwise.*]

Upon reading the several affidavits of, &c., filed the day of , 188 , and upon hearing counsel [*or* the solicitors] on both sides [*or as the case may be*]—

It is ordered that a writ of Habeas Corpus issue, directed to , to have the body of *A. B.* before a Judge in Chambers at the Royal Courts of Justice, London, forthwith to undergo and receive, &c.

Dated, &c.

No. 176.

Writ of Habeas Corpus ad Subjiciendum.

VICTORIA, by the Grace of God, &c., to greeting: We command you that you have in the Queen's Bench Division of Our High Court of Justice [*or* before a Judge in Chambers] at the Royal Courts of Justice, London, immediately after the receipt of this Our writ, the body of *A. B.* being taken and detained under your custody as is said, together with the day and cause of his being taken and detained, by whatsoever name he may be called therein, to undergo and receive all and singular such matters and things as Our said Court [*or* Judge] shall then and there consider of concerning him in this behalf; and have you there then this Our writ.

Witness, &c.

To be indorsed.

By order of Court [*or* of Mr. Justice].

This writ was issued by, &c.

[NOTE.—As to indorsement see r. 230; as to teste, r. 231; and as to return, r. 232, *ante*, pp. 105—6.]

No. 177.

Notice to be served with Writ of Habeas Corpus ad Subjiciendum.

In the High Court of Justice,
Queen's Bench Division.

[*If in a cause already on the Crown side, here insert the title, not otherwise.*]

Whereas this Court [*or* the Honourable Mr. Justice] has granted a writ of Habeas Corpus directed to [*or* other person having the custody of , *if so*] commanding him to have the body

of before the said Court [*or* before a Judge in Chambers] at the Royal Courts of Justice, London, immediately to undergo, &c.

Now take notice, that you are hereby required to have the body of the said before the said Court [*or* before the said Judge as aforesaid] on the day of , 188 , at the hour of in the noon. And to make a return to the said writ. Or in default thereof, the said Court will then, or so soon after as counsel can be heard, be moved for an attachment against you for your contempt in not obeying the said writ [*or if in vacation*, that application will then be made to one of the Judges of the said Court for a warrant for your apprehension, in order that you may be held to bail to answer for your contempt in not obeying the said writ].

Dated, &c.

(Signed)
M. N., of *L.*, solicitor for .

To [*the persons to whom the writ is directed, and any other person upon whom it may be deemed necessary to serve the writ*].

No. 178.

Notice on having obtained Writ of Habeas Corpus ad Subjiciendum on an Informal or Illegal Commitment.

[*Heading as in No.* 177.]

Recite the granting of the writ as No. 177, *then say :—*

Now take notice that by virtue of the said writ, the said *A. B.* will be brought before the said Court [*or* before a Judge in Chambers] at the Royal Courts of Justice, London, on the of , [*at of the clock, &c.*], in order that he the said may be discharged out of custody as to the commitment by which he is now detained in the custody of the said gaoler.

Dated, &c.

(Signed)
M. N., solicitor for the said .

To *A. B.* and *C. D.* Esqrs., the committing magistrates, and to the Prosecutor.

No. 179.

Affidavit of Service of Writ of Habeas Corpus ad Subjiciendum.

[*Heading as in No.* 177.]

I, *A. B.*, of &c., make oath and say :—

1. That I did on the day of 188 , personally serve *C. D.* with a writ of Habeas Corpus issued out of and under the seal of this honourable Court, directed to the said *C. D.*, commanding him to have the body of before [this Court], immediately to undergo, &c. [*describe the direction and mandatory part of the writ*], by delivering such writ of Habeas Corpus to the said *C. D.*, personally, at in the county of

Sworn, &c.

[NOTE.—See r. 240, *ante*, p. 109.]

No. 180.

Affidavit of Search at Crown Office for Return to Writ of Habeas Corpus.

[*Heading as in No.* 177.]

I, *A. B.*, of &c., make oath and say :—

1. That I did the day of 188 , search the proper file at the Crown Office for a return to a writ of Habeas Corpus, lately issued out of and under the seal of this honourable Court, directed to commanding him to have the body of before this Court, immediately to undergo, &c. [*as the case may be*], but that no return was then filed or made to the same.

2. That the said has not, in any manner, obeyed the said writ, as I verily believe.

Sworn, &c.

No. 181.

Affidavit for Writ of Habeas Corpus ad Testificandum, or Order to Testify.

In the High Court of Justice,
Queen's Bench Division.

I, *A. B.*, of &c., make oath and say :—

1. That *C. D.*, now a prisoner confined in her Majesty's prison at in and for the undergoing a term of imprisonment for [*or* under commitment to take his trial for] [*here shortly state offence*] is and will be a material and necessary witness on behalf of on the trial of an indictment [*or* before the Grand Jury of the county of upon an indictment to be preferred] against *E. F.*, for certain , which indictment stands for trial [*or* is to be preferred] on the day of 188 , at in and for the county [*or* borough, *or as the case may be*] of .

2. That the cannot safely proceed to trial [*or* prefer the said indictment] without the testimony of the said *C. D.*

Sworn, &c.

[NOTE.—See rr. 246, 247, *ante*, pp. 111, 112.]

No. 182.

Affidavit for Writ of Habeas Corpus ad Testificandum, or Order to Testify, in a Cause on the Crown Side.

In the High Court of Justice,
Queen's Bench Division.

[*Middlesex.*]—The Queen
against
A. B.

I, *A. B.*, of &c., make oath and say :—

1. That this cause stands for trial at in and for the of on the day of 188 , and that *E. F.*, a prisoner confined in Her Majesty's prison at in and for the of , undergoing a term of penal servitude [*or otherwise describe the nature of the confinement*] is a material and necessary witness on behalf of on the trial of the said cause.

2. That the said cannot safely proceed to trial without the evidence of the said *E. F.*

Sworn, &c.

No. 183.

Writ of Habeas Corpus ad Testificandum.

VICTORIA, by the Grace of God, &c., to the gaoler of Our prison at of and for Our : We command you that you have before [*description of Court*] on the day of 188 , at , the body of , being committed and detained in Our prison under your custody, as is said, then and there to testify the truth and give evidence [on Our behalf against *A. B.* for *felony; or otherwise describe the proceedings as in a subpœna*], and so from day to day until the said shall have given his evidence as aforesaid. And when he shall have given his evidence, then that you take him back without delay to Our said prison under your custody, and cause him to be detained therein under safe custody, until he shall be from thence discharged by due course of law. Witness, &c.

[NOTE.—See r. 247 and note thereto, *ante*, p. 111; and for indorsement, No. 176, *ante*, p. 239.]

No. 184.

Order instead of Writ of Habeas Corpus ad Testificandum, pursuant to 16 & 17 Vict. c. 30, s. 9.

In the High Court of Justice,
Queen's Bench Division.

Middlesex.—The Queen
against
A. B.

[*If not in a cause in the High Court, omit the title.*]

Upon reading the affidavit of *C. D.*, filed the day of 188 , and upon hearing the solicitor for .

It is ordered that the gaoler of Her Majesty's prison at , of and for the [county] of [*or as the case may be*], do have before on the day of 188 , the body of *E. F.*, committed and detained in his custody, as it is said, then and there to testify the truth and give evidence on [behalf of the Queen against *G. H.* upon an indictment for felony; *or otherwise describe the proceedings in which the prisoner is required to attend as in a subpœna*], and so from day to day until the said *E. F.* shall have given his evidence as aforesaid. And when he shall have given his evidence, then that you take him back without delay to the said prison, to be detained therein until he shall be from thence discharged by due course of law.

Dated, &c.

[NOTE.—See r. 247, *ante*, p. 111; and for indorsement, No. 176, *ante*, p. 239.]

No. 185.

Writ of Habeas Corpus to Deliver.

VICTORIA, by the Grace of God, &c., to the gaoler of Our prison at , in and for Our county of , greeting: We command you that you deliver the body of , committed and detained in Our prison under your custody, to the gaoler of Our prison at , of and for Our of , and that you certify to Our said last-mentioned gaoler the cause of his taking and detainer, that Our said last-mentioned gaoler may cause him to be detained in Our prison at ,

according to the tenor of Our writ directed to him for that purpose, to remain in the same last-mentioned prison until he shall be from thence discharged by due course of law. Witness,

[NOTE.—See r. 248, *ante*, p. 112. It must be indorsed "For the Queen," and also as in No. 176, *ante*, p. 239. As to affidavit in support of application for this and the next writ, see note to No. 173, *ante*, p. 238.]

No. 186.

Writ of Habeas Corpus to Receive.

VICTORIA, by the Grace of God, &c., to the gaoler of Our prison at *C.*, of and for our [*county*] of *G.*, greeting: Whereas We, being willing that the body of *A. B.*, now in Our prison under the custody of the gaoler of Our prison at *D.*, of and for Our county of H., should, for certain reasons, be forthwith conveyed from thence to you, have lately commanded by Our writ the said gaoler of our prison at *D.* that he should without delay deliver the said *A. B.* into your custody, and certify to you the cause of his taking and detaining. We therefore command you that you receive the said *A. B.* from the said gaoler of Our said prison at *D.*, and cause him to be detained in Our said prison at *C.* under safe custody, until he shall be from thence delivered by due course of law. Witness, &c.

[NOTE.—See r. 248, *ante*, p. 112. It must be indorsed "For the Queen," and also as in No. 176, *ante*, p. 239. This and the preceding writ, No. 185, are used under 38 Geo. III., c. 52, commonly called "Coke's Act," and sometimes at Common Law, to remove prisoners confined in a prison, not being the prison of the county or place where they are to be tried, to the prison of the place where they are to be tried.]

No. 187.

Writ of Habeas Corpus to bring a Prisoner before Justices of the Peace to answer a Charge.

VICTORIA, by the Grace of God, &c., to the gaoler of Our prison at in and for Our of greeting: We command you that you have before some one or more of the keepers of Our peace, and Our justices assigned to hear and determine divers crimes, trespasses, and other offences, committed within Our county of , who may be in attendance on the day of at the hour of in the noon at in Our said county, the body of being committed and detained in Our prison under your custody as is said, together with the day and cause of his being taken and detained, by whatsoever name he may be called, then and there to answer to a charge of to be then and there made against him, and so from day to day until he shall have answered the said charge, and to be dealt with according to law. And have you then there this writ. Witness, &c.

[NOTE.—For indorsement, see No. 176, *ante*, p. 239.]

No. 188.

Writ of Habeas Corpus to bring up a Prisoner to plead to an Indictment or for Trial.

VICTORIA, &c., to the gaoler of Our prison at in and for Our said , greeting: We command you that you have before [*description of Court*] at on the day of at the hour of in the noon the body of being committed and detained in Our prison under your custody as is said, together with the day and cause of his being taken and detained, by whatsoever name he may be called, then and there to answer to [*or* to take his trial upon] an indictment against him for . And so from day to day until he shall have answered as aforesaid [*or* taken his trial as aforesaid]. And to be further dealt with according to law. And have you then there this writ. Witness, &c.

[NOTE.—For indorsement, see No. 176, *ante*, p. 239.]

No. 189.

Writ of Habeas Corpus to bring a Prisoner to the Crown Office to attend the Nomination, &c., of a Special Jury.

VICTORIA, by the Grace of God, &c., to the gaoler of Our prison of , greeting: We command you that you have the body of , being detained in Our prison under your custody, before Frederick Cockburn, Esquire, Queen's coroner and attorney in the Queen's Bench Division of Our High Court of Justice, before us on the day of at the hour of in the noon, at the Crown Office, Royal Courts of Justice, London; there to attend the nomination of forty-eight good and lawful men out of the book or list of persons qualified to serve on special juries within the county of , as and for a jury to be taken between Us and the said upon an information exhibited against him in Our Court before us, by the said Frederick Cockburn, Queen's coroner and attorney as aforesaid, for certain [*or* upon an indictment against him for certain] and so from day to day until the same jury shall be reduced, and when the said shall have so attended the nomination and reduction of the said jury, that then you cause him to be brought back without delay to Our said prison, and cause him to be detained therein under safe custody until he shall be from thence discharged by due course of law. Witness, &c.

[NOTE.—For indorsement, see No. 176, *ante*, p. 239.]

No. 190.

Writ of Attachment.

VICTORIA, by the Grace of God, &c., to the sheriff of , greeting: We command you to attach *C. D.*, so that you may have him before Us in the Queen's Bench Division of Our High Court of Justice, at the Royal Courts of Justice, London, on the day of , 188 , to answer to us for certain trespasses and contempts brought against him in Our said Court: and have you then there this writ. Witness, &c.

[NOTE.—As to indorsement, see r. 230; as to teste, r. 231, *ante*, pp. 105, 106; and as to return, r. 262, *ante*, p. 121.]

No. 191.

Affidavit for Habeas Corpus to bring up a Prisoner to be charged with Attachment.

In the High Court of Justice,
Queen's Bench Division.

England—The Queen
against
A. B.

I, *G. H.*, of &c., clerk to *I. J.*, of &c., the solicitor for the prosecutor in this cause, make oath and say :—

1. That on the day of last, a writ of attachment was granted by, and duly issued out of, this honourable Court, directed to the sheriff of against the above-named defendant for his contempt in not [*describe the nature of the contempt*].

2. That the said defendant is a prisoner for now confined in Her Majesty's prison at of and for .

3. That the prosecutor is desirous that the said defendant should be brought before this honourable Court [*or* a Judge in Chambers at the Royal Courts of Justice, London], in order that he may be charged with and committed upon the said attachment.

Sworn, &c.

[NOTE.—See r. 263, *ante*, p. 121.

If the defendant is in the Queen's Prison he may be brought into court by an Order of Course, which may be obtained without an affidavit. See r. 252 (*f*), *ante*, p. 114.]

No. 192.

Writ of Habeas Corpus on return of Cepi Corpus.

VICTORIA, by the Grace of God, &c., to the sheriff of , greeting : We command you that you have the body of before Us in the Queen's Bench Division of Our High Court of Justice, at the Royal Courts of Justice, London, forthwith after the receipt of this Our writ, to answer to Us for certain trespasses and contempts brought against him in Our said Court before Us, and whereof by your return sent to Us you have charged yourself. And have you then there this writ.

Witness, &c.

[NOTE.—See r. 263, *ante*, p. 121; and as to indorsement, &c., note to Form No. 176, *ante*, p. 239.]

No. 193.

Recognizance to answer Interrogatories.

Be it remembered, that on the day of , 188 , in the Queen's Bench Division of Her Majesty's High Court of Justice, before the Queen herself at the Royal Courts of Justice, London, come of and of and acknowledge themselves to owe to our said Lady the Queen the several sums following, that is to say, the said the sum of , and the said and the sum of each, of lawful money of Great Britain, to be levied upon their several goods and chattels, lands and tenements to Her Majesty's use. Upon condition that if the said shall answer to all such interrogatories as shall be exhibited to him in the said Court touching a contempt supposed to have been

by him committed against the said Court, and shall appear from day to day in the said Court, and not depart the said Court without leave, then this recognizance to be void or else to remain in full force.

Taken, &c.

By the Court.

[NOTE.—See r. 264, *ante*, p. 121.]

No. 194.

Writ of Contumace Capiendo.

VICTORIA, by the Grace of God, &c., to the sheriff of , greeting: Whereas *A. B.* has signified to us, &c., that *C. D.*, of &c. in your county of is manifestly contumacious and contemns the jurisdiction and authority of the law and jurisdiction ecclesiastical of [*here state the contempt charged*], nor will *C. D.* submit to the ecclesiastical jurisdiction, but forasmuch as the royal power ought not to be wanting to enforce such jurisdiction, We command you that you attach the said *C. D.* by his body until he shall have made satisfaction for the said contempt, and how you shall execute this Our precept notify unto Us on the day of at Our Royal Courts of Justice, London. And in nowise omit this and have you then there this writ.

Witness Ourself at Westminster the day of in the year of Our reign.

(Signed)
ESHER,
(Master of the Rolls).

To be indorsed after delivery into Court.

This writ is allowed and delivered of record before our Lady the Queen in the Queen's Bench Division of Her Majesty's High Court of Justice at the Royal Courts of Justice, London, the day of , 188 , according to the form of the statute in such case made and provided.

In Court.

[NOTE.—See r. 277, and note thereto, *ante*, p. 124.]

No. 195.

Writ of Capias cum Proclamatione super Contumace Capiendo.

VICTORIA, by the Grace of God, &c., to the sheriff of , greeting: Whereas [*recite the writ of Contumace Capiendo throughout in the past tense*]

And whereas, in obedience to the said writ, you returned to Us that [*recite the return which should state that (the defendant) cannot be found in the sheriff's bailiwick*], as in the Queen's Bench Division of Our High Court of Justice before Us it appears upon record. Therefore, according to the form of the statutes in such case made and provided, We command you that you take the said , if he shall be found in your bailiwick, and him safely keep, so that he may make satisfaction for the said contempt, and if the said shall not be found in your bailiwick, that then you cause open proclamation to be made ten days at least before the return of this writ in your full County Court, or else at the general assizes and gaol delivery to be holden within your said county or at a quarter sessions, to be holden before the justices of the peace within your said county, according to the form of the statutes that the said shall, within six days next after such proclamation, yield

his body to Our prison of your said county, there to remain as a prisoner according to the tenor and effect of Our said first writ to you [*or* to the then sheriff] before directed, under pain of forfeiture of *ten pounds** of lawful money of Great Britain, and how you shall execute this Our writ make known to Us at the Royal Courts of Justice, London, on the day of next, that We may cause further to be done thereon what of right and according to the form of the statutes in such case made and provided, shall be meet to be done.

* The second Capias twenty pounds, and the like sum in every subsequent writ.

Witness, JOHN DUKE, BARON COLERIDGE, at the Royal Courts of Justice, London, the day of in the year of Our Lord one thousand, &c.

[NOTE.—See r. 279, *ante*, p. 125.]

No. 196.

Writ of Attachment for the Peace.

VICTORIA, by the Grace of God, &c., to the sheriff of , greeting: Because *A. B.* was afraid that he might be in many ways disquieted and made grievous concerning his life and maiming of his limbs by *C. D.*, as the said *A. B.* has made oath before Us; therefore We command you that you attach the said *C. D.* so that you may have him before Us on the day of to find then before Us sufficient security for the keeping of Our peace by him towards Us and all Our people, and especially towards the said *A. B.*, under a certain penalty then to be imposed on him by Us, and when you have so attached the said *C. D.*, you are to discharge him on bail until the said day by sufficient manucaptors, who shall be willing to bail him under a certain penalty reasonably to be imposed upon them by you, as well for the keeping his day as for the keeping Our peace by him in the meantime. Witness, &c.

To be indorsed.

"This writ is granted on motion in open Court and the cause thereon recorded according to the form of the statute in such case made and provided."

This writ was issued by, &c.

[NOTE.—As to issuing and return, See r. 282, *ante*, p. 126. As to further indorsement, see r. 230, *ante*, p. 105.

No. 197.

Articles of the Peace.

In the High Court of Justice,
Queen's Bench Division.

England.—Articles of the peace exhibited by , of , against , through fear of death or of receiving some great bodily harm.

1. I, this Exhibitant, make oath and say, that [*state the circumstances of the case, and the reasons for apprehending danger to life or of receiving bodily injury, and set out threatening letters, if any*].

2. I further say, that by reason of the premises aforesaid I am in great bodily fear, and conceive myself to be in great danger of the loss of my life from the violence of the said . And fear that the said will endeavour to put his threats into execution, or do me some grievous bodily

harm, and therefore I humbly crave that the said may be restrained therefrom by this honourable Court, and ordered to give security to keep the peace towards me, &c.

3. I further say, that I do not make this complaint against the said through any hatred, malice, or ill-will which I have or bear towards him, but merely for the preservation of myself from bodily harm, violence, and insult.

Sworn in open Court, at the Royal Courts of Justice, London, the day of , 188 .

(Signed)
A. B.,
[*To be signed by the Exhibitant.*]
By the Court.

[NOTE.—See r. 281, *ante*, p. 125.]

No. 198.

Recognizance for Good Behaviour and to keep the Peace.

Be it remembered, that on the day of 188 [*insert the names and descriptions of Defendant and bail*], come into the Queen's Bench Division of her Majesty's High Court of Justice before the Queen herself [*or* before me one of her Majesty's Justices of the of] and acknowledge to owe our Sovereign Lady the Queen the several sums following (that is to say), the said the sum of pounds, and the said and the sum of pounds each of lawful money of Great Britain, to be levied upon the several goods and chattels, lands and tenements, to Her Majesty's use upon condition that if the said shall be of good behaviour for the space of years, to be computed from and after the day of 188 , and keep the peace towards all her Majesty's liege subjects, and especially towards *A. B.*, and not depart that Court without leave, then this recognizance to be void or else to remain in full force.

Taken, &c.

[NOTE.—See rr. 288, 289, *ante*, p. 127. This recognizance is usually given in Court at the time the defendant is sworn to answer the interrogatories, but if not then given, it may be acknowledged before a Judge at Chambers.]

No. 199.

Affidavit of Service of Notice.

In the High Court of Justice,
Queen's Bench Division.
[*When in a cause on the Crown side of the Court, insert the title of the cause, but not otherwise.*]

I, *A. B.*, of &c., make oath and say :—

[*When not personal.*]

1. That I did on the day of , serve *C. D.*, one of the persons to whom the notice hereunto annexed is directed, with the said notice, by delivering a copy of the said notice to , and leaving the same with [*the wife, clerk, or servant of*] the said at the residence of the said , situate at in the county of .

2. That I did on the day of , also serve *E. F.*, [*When personal.*] another of the persons to whom the said notice is directed, with the said notice, by delivering a copy of the said notice personally to the said at , in the county of .

Sworn, &c.

No. 200.

Affidavit of Personal Service of Order.

[*Heading as in No.* 199.]

I, *A. B.*, of &c., make oath and say :—

That I did on the day of 188 , personally serve *C. D.*, mentioned in the order hereunto annexed, with the said order, by delivering a true copy of the said order to the said *C. D.* personally at in the county of . And at the same time showing to the said *C. D.* the said original order.

Sworn, &c.

No. 201.

Affidavit of Service of Order not Personal.

[*Heading as in No.* 199.]

I, *A. B.*, of, &c., make oath and say :—

That I did on the day of 188 , serve *C. D.*, mentioned in the order hereunto annexed, with the said order, by delivering a true copy of the said order to , and leaving the same with [*the wife, clerk, or servant*] of the said *C. D.*, at the dwelling-house [*or* office] of the said *C. D.*, situate at in the county of . And at the same time showing to the said the said original order.

Sworn, &c.

No. 202.

Affidavit of Personal Service of Writ.

[*Heading as in No.* 199.]

I., *A. B.*, of &c., make oath and say :—

That I did on the day of , personally serve *C. D.* named in the writ of hereunto annexed with the said writ, and which said writ appeared to this deponent to be duly and regularly issued out of, and under the seal of this honourable Court, by delivering a true copy of such writ to the said personally, at in the county of . And at the same time showing to the said *C. D.*, the said original writ.

Sworn, &c.

[NOTE.—For the purpose of grounding an application for an attachment for not obeying an order of Court or a Writ, the service must be personal, except in the case of the service of a subpœna to answer an information when service at the residence of the parties upon a clerk, wife, or servant, showing the original, is sufficient.]

No. 203.

Affidavit of Service of Subpœna.

[*Heading as in No.* 199.]

I, *A. B.*, of &c. make oath and say:—
That I did on the day of personally serve *C. D.*, one of the persons to whom the writ of Subpœna hereunto annexed, marked (A), is directed, with the said writ, by delivering a true copy of the said writ to the said *C. D.* at in the county of . And at the same time showing to the said *C. D.* the said original writ. And at the time of such service gave to the said *C. D.* the sum of for conduct-money.
Sworn, &c.

[NOTE.—In order to move for a writ of attachment for not obeying a subpœna, there should also be an affidavit that the witness did not attend, and of the service of any subsequent notice that may have been given to him of the time his attendance was required, subsequent to the day named in the subpœna; there should also be affidavits of any special circumstances relating to the non-attendance of the witness, and that the witness was called upon his subpœna and did not answer.]

No. 204.

Affidavit of Service of Order and Master's Allocatur and demand and Non-Payment of Money, to estreat Recognizance.

In the High Court of Justice,
Queen's Bench Division.

[*Middlesex.*]—The Queen
against
X. Y.

I, *A. B.*, of &c., make oath and say:—
1. That I , did, on the day of 188 , personally serve named in the order of Court hereunto annexed, with the said order and the allocatur of the Queen's coroner and attorney in this Court [*or* of the master of the Crown Office] for the sum of made thereon, by delivering a true copy of the said order and allocatur to the said at in the county of , and at the same time showing to the said the said original order and the said allocatur. And I did, at the same time, demand of the said the said sum of , the amount of the said allocatur; but the said did not then pay the same, or any part thereof, to this deponent; nor has he the said , at any time since paid the same, or any part thereof, to the Prosecutor in this cause, or to any one on his behalf, as I have been informed by the said Prosecutor, and verily believe. And the said sum of still remains due and unpaid to the said Prosecutor, or to me, his solicitor.
2. And that I did also, on the day of 188 , personally serve one of the bail of the said Defendant in this cause, with the said order and allocatur, by delivering a true copy of the said order and allocatur to the said at the residence of the said at in the county of and at the same time showing to the said the said original order and allocatur. And I did, at the same time, demand of the said the said sum of , but the said

did not then pay the same, or any part thereof, to this deponent, nor has he, the said , at any time since, paid the same, or any part thereof to me, or to the Prosecutor in this cause, or to any one on his behalf, as I have been informed by the said Prosecutor, and verily believe.

3. That I did on the day of 188 , personally serve the other bail of the said Defendant, with the said order and allocatur, by delivering a true copy of the said order and allocatur to the said , at , in the county of , and at the same time showing to the said the said original order and allocatur. And I did, at the same time, demand of the said the said sum of , but the said did not then pay the same, or any part thereof, to me, nor has he, the said , at any time since paid the same, or any part thereof, to this deponent, or to the said Prosecutor, or to any one on his behalf, as I have been informed by the said Prosecutor, and verily believe. And that the said sum of still remains unpaid.

Sworn, &c.

[NOTE.—This affidavit may be sworn by the prosecutor, or by his solicitor. When made by the solicitor, it may be advisable also to have an affidavit by the prosecutor, that the money has not been paid to him; and when made by the prosecutor, an affidavit by the solicitor to the same effect.]

COSTS OF VIEW IN UNDER-SHERIFF'S ACCOUNT UNDER RULE 159.

	£	s.	d.
For travelling expenses to the under-sheriff, showers, and jurymen, expenses actually paid, if reasonable.			
Fee to the under-sheriff when the distance does not exceed five miles from his office	1	1	0
Where such distance exceeds five miles	2	2	0
And in case he shall be necessarily absent more than one day, then for each day after the first a further fee of	1	1	0
Fee to each of the showers the same as the under-sheriff, calculating the distance from their respective places of abode.			
Fee to each of the common jurymen per diem	0	5	0
Fee to each special juryman per diem	1	1	0
Allowance for refreshment to the under-sheriff, showers, and jurymen, whether common or special, each per diem	0	5	0
To the bailiff for summoning each juryman whose residence is not more than five miles distance from the office of the under-sheriff .	0	2	6
And for each whose residence does exceed five miles of such distance	0	5	0

TABLE OF COURT FEES TO BE TAKEN IN THE CROWN OFFICE DEPARTMENT

Writs and Summonses.

	£	s.	d.
1. On sealing a writ of mandamus	1	0	0
2. On sealing a writ of subpœna for witnesses, not exceeding three persons	0	5	0
3. On sealing every other writ	0	5	0
4. On sealing or issuing an originating summons, under the Act 6 & 7 Vict. c. 73, for the taxation of a solicitor's bill of costs within twelve months after delivery, or delivery of a bill of costs by a solicitor, including the order to be made thereon	0	10	0
5. On sealing any other originating summons	0	10	0
6. On amending same	0	5	0
7. On sealing or issuing a summons for directions under Order XXX.	0	10	0
8. On sealing or issuing any other summons	0	3	0

Appearances and Pleas.

9. On entering an appearance, for each person	0	2	0
10. On entering a plea, for each person	0	5	0

Copies.

11. On a copy of a written deposition of a witness to enable a party to print same, for each folio	0	0	4
12. On examining a written or printed copy and marking or sealing same as an office copy, for each folio	0	0	2
13. On making a copy and marking same as an office copy, for each folio	0	0	6
14. On a copy in a foreign language	The actual cost.		
15. On a copy of a plan, map, section, drawing, photograph, or diagram	The actual cost.		

Attendances.

16. On an application, with or without a subpœna, for any officer to attend as a witness, or to produce any record or document to be given in evidence (in addition to the reasonable expenses of the officer), for each day or part of a day he shall necessarily be absent from his office	1	0	0

The officer may require a deposit of stamps on account of any further fees, and a deposit of money on account of any further expenses, which may probably become payable beyond the amount paid for fees and expenses on the application, and the officer or his clerk taking such deposit shall thereupon make a memorandum thereof on the application.

The officer may also require an undertaking in writing to pay any further fees and expenses which may become payable beyond the amounts so paid and deposited.

Oaths, &c.

	£	s.	d.
17. On taking an affidavit or an affirmation or attestation upon honour in lieu of an affidavit or a declaration, for each person making same	0	1	6
18. And in addition thereto, for each exhibit therein referred to and required to be marked	0	1	0

Filing.

19. On filing a special case	1	0	0
20. If on appeal from an Inferior Court	0	10	0
21. On filing an affidavit, writ of execution with return, recognizances, and every other proceeding or document required to be filed	0	2	6

Certificates.

22. On a certificate of appearance, or of a pleading, affidavit, or proceeding having been entered, filed, or taken, or of the negative thereof, unless otherwise provided	0	2	6
23. Or if a certificate of proceedings pursuant to Order LXI., Rule 24	0	5	0

Searches and Inspections.

24. On an application to search for an appearance and inspecting same	0	1	0
25. On an application to search an index and inspect a pleading, judgment, order, or other record, unless otherwise expressly provided for by any Act of Parliament, for each hour or part of an hour occupied	0	2	6
26. Not exceeding on one day	0	10	0

Hearing.

27. On entering or setting down, or re-entering or re-setting down, an Appeal to the Court of Appeal, or a cause, matter, or proceeding required to be entered in the Crown Paper, but not any interlocutory motion or application arising out of any cause, matter, or proceeding in respect of which such fee shall have been previously paid by the party entering	2	0	0
28. If an Appeal from an Inferior Court to the High Court	1	0	0

Judgments and Orders.

On drawing up and entering Judgments and Orders :—

29. If an order made in Court ordering a judgment to be entered, or an order in the nature of a judgment, or on the hearing of a special case, unless otherwise directed	1	0	0
30. If on an Appeal from an Inferior Court	0	10	0
31. If on any application to the Court of Appeal	1	0	0
32. If an Order of Course, under the Act 6 & 7 Vict. c. 73, to tax a solicitor's bill of costs within twelve months after delivery, or for delivery of a bill of costs by a solicitor where fee No. 4 (on the summons) is not applicable	0	10	0
33. If an Order of Course or any other Order	0	5	0
34. On signing a note or memorandum of an Order pursuant to Order LII., rule 14, when required for production, where no Order is drawn up	0	3	0

On Proceedings before a Master.

	£	s.	d.
35. On every reference, investigation, or inquiry, including examination of witnesses, if any, for every hour or part of an hour the officer is occupied	0	10	0

Taxation of Costs.

36. On taxing a bill of costs, where the amount allowed does not exceed £4	0	2	0
37. Where the amount exceeds £4, for every pound allowed or a fraction thereof	0	1	0

These fees, unless otherwise provided, shall be taken on signing the certificate, or on the allowance of the bill of costs as taxed; but the fees shall be due and payable, if no certificate or allocatur is required, on the amount of the bill as taxed, or on the amount of such part thereof as may be taxed, and the solicitor or party suing in person shall in such case cause the proper stamps (the amount thereof to be fixed by the officer) to be impressed on or affixed to the bill of costs.

The taxing-officer may require a deposit of stamps on account of fees before taxation, not exceeding the fees on the full amount of the costs as submitted for taxation, and the officer or his clerk on taking such deposit shall make a memorandum thereof on the bill of costs.

Miscellaneous.

38. On an allowance of a table of fees	1	0	0
39. On a fiat of a judge	0	5	0
40. On taking a recognizance or bail	0	10	0
41. On a commitment	0	5	0
42. On signing an information	0	10	0
43. On nominating and reducing a jury pursuant to the County Juries Act, 1825, and the Juries Act, 1870	1	0	0

We concur in respect of the above fees.

(Signed) CHARLES DALRYMPLE.
W. H. WALROND.

Two of the Commissioners of Her Majesty's Treasury.

APPENDIX N.

O. LXV., App. N.

NOTE.—*See Order LXV., rr.* 8, 9, ante, *pp.* 139, 140. *Items which have no application on the Crown side of the Queen's Bench Division are put in italics.*

COSTS.

—	Higher Scale.			Lower Scale.		
WRITS, SUMMONSES, AND WARRANTS.	£	s.	d.	£	s.	d.
Writ of summons for the commencement of any action	0	13	4	0	6	8
And for indorsement of claim, if special	0	5	0	0	5	0
Concurrent writ of summons	0	6	8	0	6	8
Renewal of a Writ of summons	0	6	8	0	6	8
Notice of a writ for service in lieu of writ out of jurisdiction	0	5	0	0	4	0
Writ of inquiry	1	1	0	1	1	0
Writ of mandamus	1	1	0	0	10	0
Or per folio	0	1	4	0	1	4
Writ of subpœna ad testificandum or duces tecum	0	6	8	0	6	8
And if more than four folios, for each folio beyond four	0	1	4	0	1	4
Writ or writs of subpœna ad testificandum for any number of persons not exceeding three, and the same for every additional number not exceeding three	0	6	8	0	6	8
Writ of Distringas, pursuant to statute 5 Vict. c. 5.	0	13	4	0	13	4
Writ of execution, or other writ to enforce any judgment or order	0	10	0	0	7	0
And if more than four folios, for each folio beyond four	0	1	4	0	1	4
Procuring a writ of execution or notice to the sheriff, marked with a seal of renewal	0	6	8	0	6	8
Notice thereof to serve on sheriff	0	5	0	0	4	0
Any writ not included in the above These fees include all indorsements and copies, or præcipes, for the officer sealing them, and attendances to issue or seal, except where otherwise provided, but not the Court fees.	0	10	0	0	7	0
Summonses to attend at Judge's Chambers	0	6	8	0	3	0
Or if special, at taxing officer's discretion, not exceeding	1	1	0	0	13	4
Copy for the Judge, when required	0	2	0	0	2	0
Or per folio	0	0	4	0	0	4
Originating summons for proceedings in chambers in the Chancery Division at taxing officer's discretion, not exceeding	1	1	0	1	1	0
And attending to get same and duplicate sealed, and at the proper office to file duplicate and get copies for service stamped	0	13	4	0	13	4
Copy for the Judge	0	2	0	0	2	0
Or per folio	0	0	4	0	0	4
Indorsing same and copies under Order LV., Rule 22.	0	6	8	0	6	8

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—	Higher Scale. £	s.	d.	Lower Scale. £	s.	d.
SERVICES AND NOTICES.						
Service, or filing in lieu of service, of any writ, summons, warrant, interrogatories, *petition*, order, or notice on a party who has not entered an appearance, and if not authorised to be served by post	0	5	0	0	5	0
If served at a distance of more than two miles from the nearest place of business, or office of the solicitor serving the same, for each mile beyond such two miles therefrom	0	1	0	0	1	0
Where, in consequence of the distance of the party to be served, it is proper to effect such service through an agent (other than the London agent), for correspondence in addition	0	7	0	0	7	0
Where more than one attendance is necessary to effect service, or to ground an application for substituted service, such further allowance may be made as the taxing officer shall think fit						
For service out of the jurisdiction such allowance is to be made as the taxing officer shall think fit . .						
Service where an appearance has been entered on the solicitor or party	0	2	6	0	2	6
Or if authorised to be served by post	0	1	6	0	1	6
Where any writ, order, and notice, or any two of them, have to be served together, one fee only for service is to be allowed.						
In addition to the above fees, the following allowances are to be made:						
As to writs, if exceeding two folios, for copy for service, per folio beyond such two	0	0	4	0	0	4
As to summons to attend at the Judges' Chambers, for each copy to serve	0	2	0	0	1	0
Or per folio	0	0	4	0	0	4
As to notices in proceedings to wind up companies, for preparing or filling up each notice to creditors to attend and receive debts, and to contributories to settle list of contributories	0	1	0	0	1	0
And for preparing or filling up each notice to contributories to be served with a general order for a call, or an order for payment of a call	0	1	0	0	1	0
And for drawing notice to be served on contributories or creditors of a meeting, per folio	0	1	0	0	1	0
For each copy of the last-mentioned notice to serve, per folio	0	0	4	0	0	4
For preparing or filling up for service in any other cause or matter, each notice to creditors to prove claims, and each notice that cheques may be received, specifying the amount to be received for principal and interest, and costs, if any	0	1	0	0	1	0
For preparing notice to produce on the trial or hearing of an action, or notice to admit	0	7	6	0	5	0
If special or necessarily long, such allowance as the taxing officer shall think proper, not exceeding per folio .	0	1	0	0	0	8

—	Higher Scale. £	s.	d.	Lower Scale. £	s.	d.
And for each copy, such allowance as the taxing officer shall think proper, not exceeding per folio	0	0	4	0	0	4
For preparing notice of motion	0	5	0	0	3	0
Or per folio	0	1	0	0	1	0
Copy for service	0	1	0	0	1	0
Or per folio	0	0	4	0	0	4
For preparing any necessary or proper notice, not otherwise provided for, *or any demand, pursuant to Order VII., Rules* 1 *and* 2	0	1	6	0	1	6
Or if special, and necessarily exceeding three folios, for preparing same, for each folio beyond three	0	1	0	0	1	0
And for each copy for service, per folio beyond such three	0	0	4	0	0	4
Copies for service of interrogatories *and petitions*, and of orders with necessary notices (if any) to accompany, per folio	0	0	4	0	0	4
Except as otherwise provided, the allowances for services include copies for service.						
Where notice of filing affidavits is required, only one notice is to be allowed for a set of affidavits filed, or which ought to be filed together.						
In proceedings to wind up a company, the usual charges relating to printing shall be allowed in lieu of copies for service, where the fee for copies would exceed the charges for printing, and amount to more than 3*l.*						
Where any appointment is or ought to be adjourned, service of a notice of the adjournment, or next appointment, is not to be allowed.						
APPEARANCES.						
Entering any appearance	0	6	8	0	6	8
If entered at one time, for more than one person, for every defendant beyond the first	0	2	0	0	1	0
If a person appearing to a writ of summons to recover land limits his defence by his memorandum of appearance, in addition to the above	0	6	8	0	6	8
INSTRUCTIONS.						
To sue or defend	0	13	4	0	6	8
For statement of claim or special case	2	2	0	0	13	4
For indorsement of writ of summons when no further statement of claim	1	1	0	0	13	4
For originating summons 6*s.* 8*d.*, or not to exceed	1	1	0	1	1	0
For defence or further defence	0	13	4	0	6	8
For counterclaim	0	13	4	0	6	8
For reply when defendant sets up a counterclaim	1	1	0	0	13	4
For reply or further reply in any other case with or without joinder of issue	0	13	4	0	6	8
For confession of defence	0	13	4	0	6	8

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	Higher Scale.			Lower Scale.		
	£	s.	d.	£	s.	d.
For joinder of issue without other matter	0	13	4	0	6	8
For *special petition*, any other pleading (not being a summons), and interrogatories for examination of a party or witness	0	13	4	0	6	8
To amend any pleading	0	13	4	0	6	8
For affidavit in answer to interrogatories, and other special affidavits	0	6	8	0	6	8
To appeal against order of Court or Judge and to appear thereon	1	1	0	0	13	4
To add parties by order of Court or Judge	0	13	4	0	6	8
For counsel to advise on evidence when the evidence in chief is to be taken orally	0	6	8	0	6	8
Or not to exceed	1	1	0	1	1	0
For counsel to make any application to a Court or Judge where no other brief	0	10	0	0	6	8
For brief on motion for special injunction	1	1	0	0	13	4
For brief on hearing or trial of action upon notice of trial or notice for judgment given, whether such trial be before a Judge, with or without a jury, or before an official or special referee, or on trial of an issue of fact before a Judge, commissioner, or referee, or on assessment of damages	2	2	0	1	1	0
For such brief, and for brief on the hearing of an appeal when witnesses are to be examined or cross-examined, such fee may be allowed as the taxing officer shall think fit, having regard to all the circumstances of the case, and to other allowances, if any, for attendances on witnesses and procuring evidence.						
The fees for instructions for brief are to apply to a hearing on further consideration in Court only where an order for accounts and inquiries was made without such hearing or trial, as above mentioned.						
DRAWING PLEADINGS AND OTHER DOCUMENTS.						
Statement of claim	1	1	0	0	10	0
Or per folio	0	1	0	0	1	0
Defence	0	10	0	0	5	0
Or per folio	0	1	0	0	1	0
Counterclaim	1	1	0	0	5	0
Or per folio	0	1	0	0	1	0
Reply, with or without joinder of issue, confession of defence, joinder of issue without other matter, and any other pleading (not being a petition or summons) and amendments of any pleading	0	10	0	0	5	0
Or per folio	0	1	0	0	1	0
Particulars, breaches, and objections, when required, and one copy to deliver	0	6	8	0	5	0
Or such amount as the taxing officer shall think fit, not exceeding per folio	0	1	0	0	0	8
If more than one copy to be delivered for, each other copy, per folio	0	0	4	0	0	4

—	Higher Scale. £	s.	d.	Lower Scale. £	s.	d.	O. LXV., App. N.
Special case, whether original or in an action, affidavits in answer to interrogatories and other special affidavits, *special petitions*, and interrogatories, per folio . .	0	1	0	0	1	0	
Brief, on trial or hearing of cause, issue of fact, assessment of damages, examination of witnesses, special case and petition before a Court or Judge, sheriff, commissioner, referee, examiner, or officer of the court when necessary and proper in addition to pleadings, including necessary and proper observations, per folio .	0	1	0	0	1	0	
Brief on application to add parties	0	10	0	0	6	8	
Or per folio	0	1	0	0	1	0	
Brief on further consideration, per sheet of 10 folios .	0	6	8	0	6	8	
Accounts, statements, and other documents for the Judge's Chambers, when required, not exceeding per folio . .	0	1	0	0	0	8	
Advertisements to be signed by Judge's clerk, including attendance therefor	0	13	4	0	6	8	
Bills of costs for taxation, including copy for the taxing officer	0	0	8	0	0	8	
COPIES.							
Of pleadings, briefs, and other documents where no other provision is made, at per folio	0	0	4	0	0	4	
Where, pursuant to Rules of Court any pleading, special case or petition of right, or evidence is printed, the solicitor of the party printing shall be allowed for a copy for the printer (except when made by the officer of the court), at per folio	0	0	4	0	0	4	
And for examining the proof print, at per folio . .	0	0	2	0	0	2	
And for printing the amount actually and properly paid to the printer, not exceeding per folio	0	1	0	0	1	0	
And in addition for every 20 beyond the first 20 copies, at per folio	0	0	1	0	0	1	
And where any part shall properly be printed in a foreign language, or as a fac-simile, or in any unusual or special manner, or where any alteration in the document being printed becomes necessary after the first proof, such further allowance shall be made as the taxing officer shall think reasonable.							
These allowances are to include all attendances on the printer.							
The solicitor for a party entitled to take printed copies shall be allowed, for such number of copies as he shall necessarily or properly take, the amount he shall pay therefor.							
In addition to the allowances for printing and taking printed copies, there shall be allowed for such printed copies as may be necessary or proper for the following, but for no other purposes (*videlicet*) :							
Of any pleading for delivery to the opposite party, or filing in default of appearance							

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	Higher Scale.			Lower Scale.		
	£	s.	d.	£	s.	d.
Of any special case for filing						
Of any petition of right for presentation, if presented in print, and for the solicitor of the Treasury, and service on any party						
Of any pleading, special case, or petition of right, for the use of the Court or Judge						
Of any affidavit to be sworn to in print						
And of any pleading, special case, petition of right, or evidence for the use of counsel in Court, and in country agency causes when proper to be sent as a close copy for the use of the country solicitor, at per folio	0	0	3	0	0	2
Such additional allowances for printed copies for the Court or Judge, and for counsel, are not to be made where written copies have been made previously to printing, and are not in any case to be made more than once in the progress of the cause						
Close copies, whether printed or written, are not to be allowed as of course, but the allowance is to depend on the propriety of making or sending the copies, which in each case is to be shown and considered by the taxing officer.						
Inserting amendments in a printed copy of any pleading, special case, or petition of right, when not reprinted	0	5	0	0	1	0
Or per folio	0	0	4	0	0	4
PERUSALS.						
Of statement of claim, defence, reply, joinder of issue, and other pleading (not being a petition in a pending cause or matter, or summons other than an originating summons), by the solicitor of the party to whom the same are delivered	0	13	4	0	6	8
Or per folio	0	0	4	0	0	4
Of amendment of any such pleading in writing	0	6	8	0	6	8
Or per folio	0	0	4	0	0	4
If same reprinted	0	13	4	0	6	8
Or per folio of amendment	0	0	4	0	0	4
Of interrogatories to be answered by a party by his solicitor	0	13	4	0	6	8
Or per folio	0	0	4	0	0	4
Of special case by the solicitor of any party except the one by whom it is prepared	0	13	4	0	6	8
Or per folio	0	0	4	0	0	4
Of copy order to add parties, notice of defendant's claim against any person not a party to the action under Order XVI., Rule 49, *and of defendant's defence and counter-claim served on a person not a party under Order XXI., Rule* 13, *by the solicitor of the party served therewith, and in these several cases the perusal of the plaintiff's statement of claim is also to be allowed unless the solicitor has been previously allowed such perusal*	0	13	4	0	6	8

—	Higher Scale. £	s.	d.	Lower Scale. £	s.	d.
Or per folio	0	0	4	0	0	4
Of notice to produce on trial or hearing of action, and notice to admit by the solicitor of the party served	0	13	4	0	6	8
Or (if to admit facts) under Order XXXII., Rule 4, per folio	0	1	0	0	1	0
Of affidavit in answer to interrogatories by the solicitor of the party interrogating, and of other special affidavits by the solicitor of the party against whom the same can be read, per folio	0	0	4	0	0	4
ATTENDANCES.						
To obtain consent of next friend to sue in his name or of a guardian ad litem	0	13	4	0	6	8
To deliver, or file in lieu of delivery, any pleading (not being a petition or summons) and a special case	0	6	8	0	3	4
To inspect, or produce for inspection, documents pursuant to a notice to admit	0	13	4	0	6	8
Or per hour	0	6	8	0	6	8
To examine and sign admissions	0	13	4	0	6	8
To inspect, or produce for inspection, documents referred to in any pleading, notice in lieu of pleading, or affidavit, pursuant to notice under Order XXXI., Rule 14	0	6	8	0	6	8
Or per hour	0	6	8	0	6	8
To obtain or give any necessary or proper consent	0	6	8	0	6	8
To obtain an appointment to examine witnesses	0	6	8	0	6	8
On examination of witnesses before any examiner, commissioner, officer, or other person	0	13	4	0	13	4
Or according to circumstances, not to exceed	2	2	0	2	2	0
Or if without counsel, not to exceed	3	3	0	3	3	0
On deponents being sworn, or by a solicitor or his clerk to be sworn, to an affidavit in answer to interrogatories or other special affidavit	0	6	8	0	6	8
On a summons at Judges' Chambers	0	6	8	0	6	8
Or according to circumstances not to exceed	1	1	0	1	1	0
In the Chancery Division, all allowances for attending at the Judges' Chambers are to be by the judge or chief clerk as heretofore.						
To file chief clerks' and taxing masters' certificates, and get copy marked as an office copy	0	6	8	0	6	8
On counsel with brief or other papers—						
If counsel's fee one guinea	0	6	8	0	3	4
If more and under five guineas	0	6	8	0	6	8
If five guineas and under twenty guineas	0	13	4	0	6	8
If twenty guineas	1	1	0	0	13	4
If forty guineas or more	2	2	0		—	
On consultation or conference with counsel	0	13	4	0	13	4
To enter or set down action, special case, or appeal, for hearing or trial	0	6	8	0	6	8

O. LXV., App. N.

—	Higher Scale. £	s.	d.	Lower Scale. £	s.	d.
In Court on motion of course and on counsel and for order	0	13	4	0	10	0
To present petition for order of course and for order	0	13	4	0	10	0
In Court on every special motion, each day	0	13	4	0	6	8
On same when heard each day	0	13	4	0	13	4
Or according to circumstances, not to exceed	2	2	0	2	2	0
On special case, or special petition, or application adjourned from the Judge's Chambers, when in the special paper for the day, or likely to be heard	0	10	0	0	6	8
On same when heard	1	1	0	0	13	4
Or according to circumstances, not to exceed	2	2	0	2	2	0
On hearing or trial of any cause, or matter, or issue of fact, in London or Middlesex, or the town where the solicitor resides or carries on business, whether before a judge with or without a jury, or commissioner, or referee, or on assessment of damages, when in the paper	0	10	0	0	10	0
When heard or tried	1	1	0	0	13	4
Or according to circumstances not to exceed	3	3	0	3	3	0
When not in London or Middlesex, nor in the town where the solicitor resides or carries on business, for each day (except Sundays) he is necessarily absent	3	3	0	3	3	0
And expenses (besides actual reasonable travelling expenses) each day, including Sundays	1	1	0	1	1	0
Or if the solicitor has to attend on more than one trial or assessment at the same time and place, in each case	1	11	6	1	1	0
The expenses in such case to be rateably divided.						
To hear judgment when same adjourned	0	13	4	0	6	8
Or according to circumstances	1	1	0	0	13	4
To deliver papers (when required) for the use of a judge prior to a hearing	0	6	8	0	6	8
If more than one judge	0	13	4	0	13	4
On taxation of a bill of costs	0	6	8	0	6	8
Or according to circumstances, not to exceed	2	2	0	2	2	0
Unless the same shall necessarily occupy so much time that the taxing officer shall consider such amount inadequate, in which case he may allow such further fee as he shall think proper.						
In actions and matters for purposes within the cognizance of the Court of Chancery before the Principal Act came into operation, such further fee as the taxing officer may think fit, not exceding the allowances heretofore made.						
To obtain or give an undertaking to appear	0	6	8	0	6	8
To present a special petition, and for same answered	0	6	8	0	6	8
On printer to insert advertisement in Gazette	0	6	8	0	6	8
On printer to insert same in other papers, each printer	0	6	8		—	
Or every two		—		0	6	8
On registrar to certify that a cause set down is settled, or for any reason not to come into the paper for hearing	0	6	8	0	6	8
For an order drawn up by chief clerk, and to get same entered	0	6	8	0	6	8
On counsel to procure certificate that cause proper to be heard as a short cause, and on registrar to mark same	0	6	8	0	6	8
To mark conveyancing counsel or taxing master	0	6	8	0	6	8

O. LXV., App. N.

—	Higher Scale. £ s. d.	Lower Scale. £ s. d.
For preparing and drawing up an order made at Chambers in proceedings to wind-up a company and attending for same, and to get same entered	0 13 4	0 13 4
And for engrossing every such order, per folio . . .	0 0 4	0 0 4
NOTE.—An order of course means an order made on an *ex parte* application, and to which a party is entitled as of right on his own statement and at his own risk.		
To examine an abstract of title with deeds, per hour, in a cause or matter	0 10 0	0 10 0
To produce deeds for such purpose, per hour . . .	0 6 8	0 6 8
OATHS AND EXHIBITS.		
Commissioners to take oaths or affidavits. For every oath, declaration, affirmation, or attestation upon honour in London or the country	0 1 6	0 1 6
The solicitor for preparing each exhibit in town or country	0 1 0	0 1 0
The commissioner for marking each exhibit . . .	0 1 0	0 1 0
TERM FEES.		
For every term commencing on the day the sittings in London and Middlesex of the High Court of Justice commence, and terminating on the day preceding the next such sittings, in which a proceeding in the cause or matter by or affecting the party, after appearance entered, shall take place	0 15 0	0 15 0
And further, in country agency causes or matters, for letters	0 6 0	0 6 0
Where no proceeding in the cause or matter is taken which carries a term fee, a charge for letters may be allowed, if the circumstances require it.		
In addition to the above an allowance is to be made for the necessary expense of postages, carriage and transmission of documents.		

ADDENDA TO CROWN OFFICE RULES.

ORDER LIX.

O. LIX., r. 1.

Divisional Courts.

Proceedings to be heard before Divisional Courts.

1. The following proceedings and matters shall continue to be heard and determined before Divisional Courts; but nothing herein contained shall be construed so as to take away or limit the power of a single Judge to hear and determine any such proceedings or matters in any case in which he has heretofore had power to do so, or so as to require any interlocutory proceeding therein heretofore taken before a single Judge to be taken before a Divisional Court:—

(*a.*) Proceedings on the Crown side of the Queen's Bench Division;

(*b.*) Appeals from Revising Barristers, and proceedings relating to Election Petitions, Parliamentary and Municipal;

(*c.*) Appeals under sect. 6 of the County Courts Act, 1875;

(*d.*) Proceedings on the Revenue side of the Queen's Bench Division;

(*e.*) Proceedings directed by any Act of Parliament to be taken before the Court, and in which the decision of the Court is final;

(*f.*) Cases stated by the Railway Commissioners under the Act, 36 & 37 Vict. c. 48;

O. LIX., rr. 1—3.

(*g.*) Cases of *Habeas Corpus*, in which a Judge directs that an order *nisi* for the writ, or the writ be made returnable before a Divisional Court;

(*h.*) Special cases where all parties agree that the same be heard before a Divisional Court;

(*i.*) Appeals from Chambers in the Queen's Bench Division;

(*j.*) Applications for new trials where there has been a trial with a jury.

This Rule is framed to give effect to s. 17 of the Appellate Jurisdiction Act, 1876 (*post*, p. 294).

In addition to such of the proceedings enumerated in this Rule as are transacted on the Crown side, there are some others, which, although not strictly speaking belonging to the Crown side, have been assigned thereto by Rule 4 of this Order, namely, Appeals from Inferior Courts under s. 45 of the Judicature Act of 1873 (except Probate and Admiralty Appeals from Inferior Courts and from Justices), and which are also required to be disposed of by Divisional Courts: see Rule 4, *post*.

As to the formation of Divisional Courts in Vacation, see Order LXIII., Rule 12, *post*, p. 277.

Provision in case of death, or other incapacity of judge.

2. Where, by sect. 17 of the Appellate Jurisdiction Act, 1876, or by these Rules, any application ought to be made to, or any jurisdiction exercised by the Judge by whom a cause or matter has been tried, if such Judge shall die or cease to be a Judge of the High Court, or if such Judge shall be a Judge of the Court of Appeal, or if for any other reason it shall be impossible or inconvenient that such Judge should act in the matter, the President of the Division to which the cause or matter belongs may either by a special order in any cause or matter, or by a general order applicable to any class of clauses or matters, nominate some other Judge to whom such application may be made, and by whom such jurisdiction may be exercised.

Appeals on compulsory reference.

3. Where a compulsory reference to arbitration has been ordered, any party to such reference may appeal from the award or certificate of the arbitrator or referee upon any

question of law; and on the application of any party the Court may set aside the award on any ground on which the Court might set aside the verdict of a jury. Such appeal shall be to a Divisional Court who shall have power to set aside the award or certificate, or to remit all or any part of the matter in dispute to the arbitrator or referee, or to make any order with respect to the award or certificate or all or any of the matters in dispute that may be just.

The provisions of s. 45 of the Act of 1873 are by s. 8 of the Act of 1884, *post*, p. 296, applied to appeals under this Rule.

Appeals from inferior Courts, how to be entered and heard.

4. Every Judge of the High Court of Justice for the time being shall be a Judge to hear and determine appeals from Inferior Courts, under sect. 45 of the Principal Act. All such appeals (except Probate and Admiralty Appeals from Inferior Courts, and from justices, which shall be to a Divisional Court of the Probate Divorce and Admiralty Division), shall be entered in one list by the officers of the Crown Office Department of the Central Office, and shall be heard by such Divisional Court of the Queen's Bench Division as the Lord Chief Justice of England shall from time to time direct.

This Rule is framed to give effect to s. 45 of the Act 1873 (*the section is set out, post*, p. 287).

See further as to the entry of appeals, Rules 11 and 15, *infra*.

The appeals dealt with by this Rule, and the Acts creating such appeals, are :—

(*a.*) Appeals from County Courts.
- (1.) By 13 & 14 Vict. c. 61, ss. 14 and 15.
- (2.) 19 & 20 Vict. c. 108, s. 68 (replevin, interpleader, and actions for recovery of tenements).
- (3.) 30 & 31 Vict. c. 142, s. 13 (actions of ejectment, and where title comes in question, and in all actions by leave of the Judge).
- (4.) 38 & 39 Vict. c. 50, s. 6. But this section only deals with procedure, and does not extend the right of appeal (*Cousins* v. *Lombard Bank*, 1 Ex. D. 404; 45 L. J. Ex. D. 573).
- (5.) 28 & 29 Vict. c. 99, s. 18 (Equity).

O. LIX. r. 4.

(6.) 46 & 47 Vict. c. 61 (Agricultural Holdings Act, 1883), s. 23.

(*b.*) From the Mayor's Court, London.
By the Mayor's Court Procedure Act, 1857 (20 & 21 Vict. c. clvii.), ss. 8, 9, 10, *post*, pp. 297, 298.

(*c.*) From the Liverpool Court of Passage.
By the Liverpool Court of Passage Procedure Act, 1853 (16 Vict. c. xxi.), ss. 45 and 47, *post*, pp. 299, 300.

(*d.*) From the Salford Hundred Court of Record.
By the Salford Hundred Court of Record Act, 1868 (31 & 32 Vict. c. cxxx.), ss. 89, 91, 92, and 93, *post*, pp. 301—304.

(*e.*) From the Railway Commissioners.
By 36 & 37 Vict. c. 48, s. 26.

(*f.*) From Quarter Sessions.
By 38 & 39 Vict. c. 55 (The Public Health Act, 1875), s. 269, sub-s. 7: (see *R.* v. *Swindon Local Board*, 49 L. J. Q. B. 522; *S. C.*, 42 L. T. 614, C.A.).

(*g.*) From Justices of the Peace exercising their summary jurisdiction.
(1.) By 20 & 21 Vict. c. 43, and 42 & 43 Vict. c. 49 (The Summary Jurisdiction Act, 1879), s. 33.
(2.) By 18 & 19 Vict. c. 122 (The Metropolitan Building Act, 1855), ss. 106 and 107.

(*h.*) From Referee or Arbitrator against award made on compulsory reference.
By 47 & 48 Vict. c. 61, s. 8.

The above list may not exhaust all the statutory or other provisions regulating appeals which come within section 45, but it contains all the more important and the only ones that have so far been dealt with under that section. It would indeed seem that Appeals from Revising Barristers ought to be included in the list, but hitherto they have not been treated as coming within the category of Appeals from Inferior Courts.

As the right of appeal from the Mayor's Court, London, the Liverpool Passage Court, and the Salford Hundred Court is regulated by local Acts which may not be readily accessible, the provisions in point are set out, *post*, pp. 297—304.

It has been previously pointed out that when the Queen's Bench Division in the exercise of its Common Law Superintending jurisdiction over inferior tribunals (which formerly belonged only to the Court of Queen's Bench), removes the judgments or orders of justices of the peace and other inferior tribunals for the purpose of examining into the validity of them, it does not exercise, technically speaking, an appellate jurisdiction so as to bring the proceedings within sect. 45 of the Act of 1873: see note to Rule 216, *ante*, p. 87, and

the cases there cited: see also as to an order in the nature of a *mandamus*, note to Rule 80, *ante*, p. 41. But it is otherwise when a right of appeal accrues under statute, such as when a case has been stated upon an Order of Sessions under s. 269 of the Public Health Act, 1875 *R.* v. *Swindon Local Board*, 49 L. J., Q. B. D. 522; 42 L. T. 614, C. A.

In County Court actions, where the appeal lies only by leave of the Judge under 30 & 31 Vict. c. 142, s. 13, the Judge in granting such leave may impose a condition, such as, that the party appealing shall pay the costs of the other party in any event: *Goodes* v. *Cluff*, 13 Q. B. D. 694.

5. *Mode of Appeal on Salvage Award.*

6. *How such Appeal conducted.*

Appeals from inferior Courts. Inferences of fact. Judgment, &c.

7. On any motion by way of appeal from an inferior Court, the Court to which any such appeal may be brought shall have power to draw all inferences of fact which might have been drawn in the Court below, and to give any judgment and make any order which ought to have been made. No such motion shall succeed on the ground merely of misdirection or improper reception or rejection of evidence, unless, in the opinion of the Court, substantial wrong or miscarriage has been thereby occasioned in the Court below.

This and the other Rules of this Order relating to appeals from Inferior Courts are made in pursuance of the power to make Rules for regulating the procedure on appeals from Inferior Courts given by s. 23 of the Judicature Act, 1884, *post*, p. 296.

By s. 6 of the County Court Act, 1875 (38 & 39 Vict. c. 50), the Judge at the trial or hearing of any cause, suit, or proceeding, other than in bankruptcy, tried in the County Court, and in which there is a right of appeal, is at the request of either party required to make a note of any question of law raised at such trial or hearing, and of the evidence in relation thereto, and of his decision thereon, and of his decision of the cause, suit, or proceeding, and sign a copy thereof, and the copy so signed by him is to be used on the hearing of the appeal. But the request to take such a note is not a condition precedent to the right of appeal: see *Seymour* v. *Coulson*, 5 Q. B. D. 359; 49 L. J., Q. B. 604, C. A.; *Morgan* v. *Rees*, 6 Q. B. D. 508, C. A.; and this Rule provides for the hearing of the appeal on other materials if the notes are not produced. As to the proper time to apply to the Judge to take a note, see *Pierpoint* v. *Cartwright*, 5 C. P. D. 139; *Morgan* v. *Rees*, *supra*.

O. LIX., rr. 8—10.

Other evidence when Judge's notes not produced.

8. On any motion by way of appeal from an inferior Court, the Court to which any such appeal may be brought shall have power, if the notes of the Judge of such inferior Court are not produced, to hear and determine such appeal upon any other evidence or statement of what occurred before such Judge which the Court may deem sufficient.

Application of Rules to certain appeals from inferior Courts.

9. The following Rules of this Order shall apply to appeals to the Queen's Bench Division from County Courts and other inferior Courts of record of civil jurisdiction in all proceedings other than proceedings in bankruptcy.

This Rule, together with the Rules referred to in it, provide a very desirable uniformity of practice with regard to appeals from Courts of Record of civil jurisdiction, and necessarily have the effect of repealing, so far as the procedure under them may be inconsistent therewith, so much of the Acts giving the appeal as relates to the mode of appeal.

The following list comprises all the better known Courts of this nature, and probably all that any longer continue to exercise their powers.

The County Courts.
The Mayor's Court of London.
The Salford Hundred Court of Record.
The Liverpool Court of Passage.

(For the Acts giving appeals in the above, see Rule 4, *ante*, p. 267.)

The Oxford University Chancellor's Court.

(This Court is regulated by 25 & 26 Vict. c. 26, s. 12.)

The following are not regulated by statute :—

The Derby Court of Record.
The Exeter Provost Court.
The Kingston-upon-Hull Court of Record.
The Newark Court of Record.
The Northampton Borough Court.
The Norwich Guildhall Court.
The Peterborough Court of Common Pleas.
The Preston Court of Pleas.
The Ramsey Court of Pleas.
The Southwark Court of Record.
The Tolzey and Pie Poudre Court of Bristol.

Of the above list only the four first-named have any provision by statute with regard to appealing. The statutes giving an appeal in those cases are referred to in the note to Rule 4, *ante*, p. 267.

Notice of motion.

10. Every such appeal shall be by notice of motion, and

no rule *nisi* or order to show cause shall be necessary. The notice of motion shall state the grounds of the appeal, and whether all or part only of the judgment, order, or finding is complained of. The notice of motion shall be an eight days' notice, and shall be served on every party directly affected by the appeal entered.

Under this Rule it would appear that, in the cases to which it applies, the procedure by way of appeal by special case provided in the Appeal Acts, and by error from the Liverpool Court of Passage, *post*, p. 300, and the Salford Hundred Court, *post*, p. 304, is taken away, and that for the future there will be but one mode of appeal, and that by notice of motion.

Entry of appeal.

11. Every appeal shall be entered at the Crown Office Department of the Central Office, and the entry shall be made by lodging a copy of the notice.

It may be convenient to mention that in addition to the copy lodged for entry, the party entering is required to supply the Court with two further copies.

Limit of time for appealing.

12. The notice of motion shall be served and the appeal entered within twenty-one days from the date of the judgment, order, or finding complained of; such period shall be calculated from the time at which the judgment or order is signed, entered, or otherwise perfected, or from the time at which the finding or any refusal is made or given.

This Rule provides a uniform limit of time for appealing in the cases referred to in Rule 9, *supra*, and so far as County Court appeals are concerned will be a welcome improvement upon the limit of eight days imposed by the County Court Act, 1875 (c. 50, s. 6). Moreover Rule 16, *post*, provides for an extension of time, see note to that Rule.

It should be noted that the notice must be entered as well as served within the time limited, which is different to the practice on appealing to the Court of Appeal; see note to Order LVIII., Rule 15, *ante*, p. 93.

The party appealing must be careful to enter the appeal within the twenty-one days, and before the day named in the notice, should that day fall before the twenty-first day. See *Donovan* v. *Brown*, 4 Ex. D. 148; 48 L. J. Ex. 456.

O. LIX., rr. 13—16.

Judge's notes.

13. It shall be the duty of the Master of the Crown Office Department forthwith upon the entry of the appeal to apply on behalf of the High Court to the Judge of the Inferior Court from which the appeal is brought for a copy of the notes of the evidence given, and for a statement of his judgment or finding on any question of law under appeal. Either party shall be entitled, upon payment of the proper fee, to obtain from the Crown Office Department an office copy of such notes and statement.

As to the materials on which the appeal may be heard if the Judge of the Court from which the appeal is brought fails to furnish his notes, see *ante*, Rule 8.

Stay of proceedings.

14. The appeal shall not operate as a stay of proceedings under the decision appealed from unless the Inferior Court shall so order or unless within ten days after the decision a deposit shall be made of or security given to the satisfaction of such Inferior Court for a sum to be fixed by the said Court, not exceeding the amount of the money or the value of the property affected by the judgment order or finding appealed from.

Entry for hearing.

15. Every appeal from an Inferior Court shall be entered in the proper list for hearing on such days as the Lord Chief Justice of England may direct, and shall come on to be heard in its order, unless the High Court shall otherwise direct.

These appeals are entered in the Crown Paper, together with the other matters heard on the Crown side of the Court.

Hitherto only one counsel has been heard on each side on the argument, whether upon a special case or upon an appeal by motion: see *Howes* v. *Peake*, 33 L. T. 818.

Power to extend time, &c.

16. The High Court shall have power to extend the time for appealing, or to amend the grounds of appeal, or to make any other order, on such terms as the Court shall think just, to ensure the determination on the merits of the real questions in controversy between the parties.

This Rule greatly enlarges the power of the Court to grant an extension of time for appealing. Hitherto in most cases the limit was fixed by Act of Parliament, and the Court had no power to extend the time: see *Tenant* v. *Rawlings*, 4 C. P. D. 133. And even when the County Court Judge allowed his judgment to be treated as of a later date, in order to allow a plaintiff to appeal, it was held that this did not extend the time: *Wilberforce* v. *Sowton*, 48 L. J., C. P. 28. O. LIX., rr. 16—17.

17. Subject to these Rules, the Rules for the time being in force with respect to appeals from the High Court to the Court of Appeal shall, so far as practicable, apply to and govern appeals from County Courts and other inferior Courts of record of civil jurisdiction to the High Court. Application of Rules of Court of Appeal.

It will be a matter for determination under this Rule how far, if at all, the applied order will enlarge the scope of the appeals affected by it; for instance, whether R. 1 of the applied order providing that the appeal shall be a rehearing, will extend in any way the appeal in County Court actions which, under the former practice, in common law matters, was confined by statute to questions of law, and by a decision of the Divisional Court to a question of law raised at the trial (*Clarkson* v. *Musgrave*, 3 Q. B. D. 386). When read in conjunction with R. 13, *ante*, p. 271, it seems clear that such appeals must at any rate still be confined to questions of law.

ORDER LXI.

O. LXI., r. 1.

Central Office.

1. The Central Office shall, for the convenient despatch of business, be divided into the Departments specified in the first column of the following scheme, and the business of the Office shall be distributed among the Departments in accordance with that scheme, and shall be performed by the several officers and clerks in the said office who are now charged with the same or similar duties, and by such others as may from time to time be appointed by lawful authority for that purpose. Departments.

O. LXI., r. 1.

Scheme.

Name of Department.	Business.
1. Writ, appearance, and judgment.	The sealing and issue of writs of summons for the commencement of actions. The entry in the cause book of writs of summons, appearances, and judgments. The sealing and issue of notices for service under Order XVI., Rule 48. The receipt and filing of pleadings and notices delivered on entry of judgment. The transaction of all business heretofore conducted in the Record and Writ Office, except such part thereof as is transacted in the Record Department.
2. Summons and Order.	The issue of summonses in the Queen's Bench Division, and the drawing up of all Orders made either in Court or in Chambers in that Division.
3. Filing and Record.	The filing of all affidavits to be filed in the Central Office, and all depositions to be used in the Chancery Division, and such other documents as may from time to time be directed by the masters to be filed, and the making and examination of office copies of documents filed in the department. The custody of all deeds and documents ordered to be left with the masters. The business heretofore performed in the Report Office under the direction and control of the Clerks of Records and Writs.
4. Taxing . .	The taxation of costs in the Queen's Bench Division, except such costs as have heretofore been taxed in the Queen's Remembrancer's Office or the Crown Office.
5. Enrolment .	The business heretofore performed in the Enrolment Office.
6. Judgments and married women's acknowledgments.	The registry of judgments, execution, &c., and the registry of acknowledgments of deeds by married women.
7. Bills of Sale .	The registry of bills of sale and other duties connected therewith.
8. Queen's Remembrancer.	The business heretofore performed in the Queen's Remembrancer's Office.
9. Crown Office .	The business heretofore performed in the Crown Office.
10. Associates . .	The business heretofore performed in the Associates' Office.

This Rule is set out because the Crown Office is included in the scheme, but it is not deemed necessary to set out the remaining Rules of the Order, as by virtue of Order LXVIII., Rule 1 (*c*), Proceedings on the Crown side of the Queen's Bench Division are

excepted from the operation of the Rules of the Supreme Court, save as expressly provided. O. LXII., r. 1.

ORDER LXIII. O. LXIII. rr. 1—4.

Sittings and Vacations.

1. The sittings of the Court of Appeal and the sittings in London and Middlesex of the High Court of Justice shall be four in every year, viz., the Michaelmas sittings, the Hilary sittings, the Easter sittings, and the Trinity sittings. The Michaelmas sittings shall commence on the 2nd of November and terminate on the 21st of December; the Hilary sittings shall commence on the 11th of January and terminate on the Wednesday before Easter; the Easter sittings shall commence on the Tuesday after Easter week and terminate on the Friday before Whit Sunday; and the Trinity sittings shall commence on the Tuesday after Whitsun week and terminate on the 8th of August. Sittings of the Courts.

The old terms are abolished, except as a measure for determining the time at or within which any act is required to be done by s. 26 of the Act of 1873, *post*, p. 283.

2. It shall not be necessary for the Court of Appeal or the High Court of Justice to sit on the day appointed to be kept as the Queen's birthday. Queen's birthday.

3. The sittings of the several offices of the Supreme Court shall extend over the whole of the four periods between the vacations. Sittings of the offices.

4. The vacations to be observed in the several courts and offices of the Supreme Court shall be four in every year, viz., the Long vacation, the Christmas vacation, the Easter vacation, and the Whitsun vacation. The Long vacation shall commence on the 10th of August and terminate on the 24th of October; the Christmas vacation shall commence on the 24th of December and terminate on the 6th Vacations.

O. LXIII., rr. 4—9.

of January; the Easter vacation shall commence on Good Friday and terminate on Easter Tuesday; and the Whitsun vacation shall commence on the Saturday before Whit Sunday, and shall terminate on the Tuesday after Whit Sunday.

See s. 27 of the Act of 1873.

Computation of days.

5. The days of the commencement and termination of each sitting and vacation shall be included in such sitting and vacation respectively.

Days when offices closed.

6. The several offices of the Supreme Court shall be open on every day of the year, except Sundays, Good Friday, Easter Eve, Monday and Tuesday in Easter week, Whit Monday, Christmas Day, and the next following working day, and all days appointed by proclamation to be observed as days of general fast, humiliation or thanksgiving.

7. *Provides for when the offices of each District Registrar of the High Court of Justice shall be open.*

Saturdays.

8. The offices of the Supreme Court (including the Judge's Chambers) shall, save as herein-after mentioned, close on Saturdays at 2 o'clock.

Office hours.

9. The office hours in the several offices of the Supreme Court, other than the Summons and Order, Crown Office, and Associates Departments of the Central Office, shall be from ten in the forenoon to four in the afternoon, except on Saturday and in vacation, when the offices shall close at two in the afternoon. In the excepted departments the hours shall be from eleven in the forenoon to five in the afternoon, except on Saturday and in vacation, when the hours shall be from eleven in the forenoon to three in the afternoon.

It should be noted that the Crown Office is one of the excepted departments.

10. *Relates only to the office of the District Registry at Manchester.*

Vacation Judges.

11. Two of the Judges of the High Court shall be selected at the commencement of each Long vacation for the hearing in London or Middlesex, during vacation, of all such applications as may require to be immediately or promptly heard. Such two Judges shall act as vacation Judges for one year from their appointment. In the absence of arrangement between the Judges, the two Vacation Judges shall be the two Judges last appointed (whether as Judges of the said High Court or of any Court whose jurisdiction is by the principal Act transferred to the said High Court) who have not already served as Vacation Judges of any such Court, and if there shall not be two Judges for the time being of the said High Court who shall not have so served, then the two Vacation Judges shall be the Judge (if any) who has not so served, and the senior Judge or Judges who has or have so served once only according to seniority of appointment, whether in the said High Court or such other Court as aforesaid. The Lord Chancellor shall not be liable to serve as a Vacation Judge.

Sittings of Judges in vacation.

12. The Vacation Judges may sit either separately or together as a Divisional Court as occasion shall require, and may hear and dispose of all causes, matters, and other business, to whichever division the same may be assigned. No order made by a Vacation Judge shall be reversed or varied except by a Divisional Court or the Court of Appeal, or the Judge who made the order. Any other Judge of the High Court may sit in vacation for any Vacation Judge.

See as to the constitution of Divisional Courts, s. 17 of the Appellate Jurisdiction Act, 1876, *post*, p. 294.

It has been decided under this Rule that a single Judge in Vacation cannot form a Divisional Court by himself: *R.* v. *West Ham Union*, 6 Dec., 1882.

As to the power of a Judge in Chambers to grant the prerogative writ of *mandamus*, see Rule 60, *ante*, p. 34.

O. LXIII. rr. 13—16.

13. *Relates to the Chancery Chambers.*

Judgments in orders made in interval between sittings.

14. In the interval between the close of any sittings and the commencement of the next sittings, the judgments or orders of any Judge may be prosecuted at the chambers of any other Judge by his permission; and in case the prosecution thereof shall not be completed during such interval, the prosecution may be continued at the Chambers of the same Judge if and so far as he shall think fit.

This Rule has no application to the proceedings on the Crown side of the Queen's Bench Division.

Intervals between sittings not included in vacation.

15. Any interval between the sittings of the High Court or any division thereof, not included in a vacation, shall, so far as the disposal of business by the Vacation Judges is concerned, be deemed to be a portion of the vacation.

16. *Relates to the sittings of the official referees.*

O. LXVIII. r. 1.

ORDER LXVIII.

Application of Rules in Crown Revenue and Matrimonial Cases.

Excepted proceedings.

1. Subject to the provisions of this Order, nothing in these Rules, save as expressly provided, shall affect the procedure or practice in any of the following causes or matters:—

(*a.*) Criminal proceedings;
(*b.*) Proceedings on the Crown side of the Queen's Bench Division;
(*c.*) Proceedings on the Revenue side of the Queen's Bench Division;
(*d.*) Proceedings for Divorce or other Matrimonial Causes.

By s. 6 of the Statute Law Revision and Civil Procedure Act, 1881 (44 & 45 Vict. c. 59), the power of making rules under the Judicature Acts is extended to proceedings by or against the Crown.

2. The following Orders shall, as far as they are applicable, apply to all civil proceedings on the Crown side of the Queen's Bench Division, including *mandamus* and prohibition, and also to *quo warranto*, and to all proceedings on the Revenue side of the said division; namely:— Application of certain orders to Crown and Revenue sides of the Court.

(*a.*) Order XXVIII. (Amendment);
(*b.*) Order XXXIV. (Special case);
(*c.*) Order XXXVIII. (Affidavits);
(*d.*) Order LII. (Motions);
(*e.*) Order LVIII. (Appeals);
(*f.*) Order LXIV. (Time);
(*g.*) Order LXV. (Costs);
(*h.*) Order LXVI. (Notices, &c.);
(*i.*) Order LXX. (Non-compliance);

Provided, that Order LVIII. shall not apply to *quo warranto*.

This Rule, so far as proceedings on the Crown side is concerned, is virtually repealed by the enactments in the Crown Office Rules, 1886: see *ante*, Rules 5, 140, 250, 293, 299, 300, 302, 303, and *quo warranto* has been made a civil proceeding for the purposes of appeal and other purposes by s. 15 of the Judicature Act, 1884, *post*, p. 294.

3. Where pleadings in prohibition are ordered, the pleadings and subsequent proceedings, including judgment and assessment of damages, if any, shall be, as nearly as may be, the same as in an ordinary action for damages. Pleadings, &c., in prohibition.

This Rule is also virtually repealed: see Rule 134, *ante*, p. 57.

4. *A Rule as to affidavits now repealed.*

The following sections selected from the various Judicature Acts have either been referred to in the course of this work, or affect the procedure on the Crown side of the Queen's Bench, and are appended for easy reference.

Act 1873, ss. 4, 16.

Supreme Court of Judicature Act, 1873, (36 & 37 Vict. c. 66.)

Division of Supreme Court into Court of original and a Court of appellate jurisdiction.

4. The said Supreme Court shall consist of two permanent divisions, one of which, under the name of "Her Majesty's High Court of Justice," shall have and exercise original jurisdiction, with such appellate jurisdiction from inferior Courts as is hereinafter mentioned, and the other of which, under the name of "Her Majesty's Court of Appeal," shall have and exercise appellate jurisdiction, with such original jurisdiction as hereinafter mentioned as may be incident to the determination of any appeal.

As to the appellate jurisdiction of the High Court, see ss. 45 and 47, *post*, p. 287, and s. 15 of the Act of 1875, *post*, p. 292.

As to the jurisdiction of the Court of Appeal, see s. 19, *post*, p. 282, and Rule 216, and note thereto, *ante*, p. 86.

Jurisdiction and Law.

Jurisdiction of High Court of Justice.

16. The High Court of Justice shall be a Superior Court of Record, and, subject as in this Act mentioned, there shall be transferred to and vested in the said High Court of Justice the jurisdiction which, at the commencement of this Act, was vested in, or capable of being exercised by, all or any of the Courts following; (that is to say,)

(1.) The High Court of Chancery, as a Common Law Court as well as a Court of Equity, including the

jurisdiction of the Master of the Rolls, as a Judge or Master of the Court of Chancery, and any jurisdiction exercised by him in relation to the Court of Chancery as a Common Law Court; Act 1873, ss. 16, 18.

(2.) The Court of Queen's Bench;
(3.) The Court of Common Pleas at Westminster;
(4.) The Court of Exchequer, as a Court of Revenue, as well as a Common Law Court;
(5.) The High Court of Admiralty;
(6.) The Court of Probate;
(7.) The Court for Divorce and Matrimonial Causes;
(8.) *The London Court of Bankruptcy;*
(9.) The Court of Common Pleas at Lancaster;
(10.) The Court of Pleas at Durham;
(11.) The Courts created by Commissions of Assize, of oyer and terminer, and of gaol delivery, or any of such Commissions;

The jurisdiction by this Act transferred to the High Court of Justice shall include (subject to the exceptions hereinafter contained) the jurisdiction which, at the commencement of this Act, was vested in, or capable of being exercised by, all or any one or more of the Judges of the said Courts respectively, sitting in Court or Chambers, or elsewhere, when acting as Judges or a Judge, in pursuance of any statute, law, or custom, and all powers given to any such Court, or to any such Judges or Judge, by any statute; and also all ministerial powers, duties, and authorities, incident to any and every part of the jurisdiction so transferred.

Jurisdiction transferred to Court of Appeal.

18. The Court of Appeal established by this Act shall be a Superior Court of Record, and there shall be transferred to and vested in such Court all jurisdiction and powers of the Courts following (that is to say):

(1.) All jurisdiction and powers of the Lord Chancellor, and of the Court of Appeal in Chancery, in the

Act 1873, ss. 18—19.

exercise of his and its appellate jurisdiction, and of the same Court as a Court of Appeal in Bankruptcy.

(2.) All jurisdiction and powers of the Court of Appeal in Chancery of the county palatine of Lancaster, and all jurisdiction and powers of the Chancellor of the duchy and county palatine of Lancaster when sitting alone or apart from the Lords Justices of Appeal in Chancery as a Judge of re-hearing or appeal from decrees or orders of the Court of Chancery of the county palatine of Lancaster:

(3.) All jurisdiction and powers of the Court of the Lord Warden of the Stannaries assisted by his assessors, including all jurisdiction and powers of the said Lord Warden when sitting in his capacity of judge:

(4.) All jurisdiction and powers of the Court of Exchequer Chamber:

(5.) All jurisdiction vested in or capable of being exercised by Her Majesty in Council, or the Judicial Committee of Her Majesty's Privy Council, upon appeal from any judgment or order of the High Court of Admiralty, or from any order in lunacy made by the Lord Chancellor, or any other person having jurisdiction in lunacy.

Appeals from High Court.

19. The said Court of Appeal shall have jurisdiction and power to hear and determine Appeals from any judgment or order, save as herein-after mentioned, of Her Majesty's High Court of Justice, or of any Judges or Judge thereof, subject to the provisions of this Act, and to such Rules and Orders of Court for regulating the terms and conditions on which such appeals shall be allowed, as may be made pursuant to this Act.

For all the purposes of and incidental to the hearing and determination of any appeal within its jurisdiction, and the amendment, execution, and enforcement of any judgment or

order made on any such appeal, and for the purpose of every other authority expressly given to the Court of Appeal by this Act, the said Court of Appeal shall have all the power, authority, and jurisdiction by this Act vested in the High Court of Justice.

Rules as to exercise of jurisdiction.

23. The jurisdiction by this Act transferred to the said High Court of Justice and the said Court of Appeal respectively shall be exercised (so far as regards procedure and practice) in the manner provided by this Act, or by such rules and orders of Court as may be made pursuant to this Act; and where no special provision is contained in this Act or in any such rules or orders of Court with reference thereto, it shall be exercised as nearly as may be in the same manner as the same might have been exercised by the respective Courts from which such jurisdiction shall have been transferred, or by any of such Courts.

Sittings and Distribution of Business.

Abolition of terms.

26. The Division of the legal year into terms shall be abolished so far as relates to the administration of justice; and there shall no longer be terms applicable to any sitting or business of the High Court of Justice, or of the Court of Appeal, or of any commissioners to whom any jurisdiction may be assigned under this Act; but in all other cases in which, under the law now existing, the terms into which the legal year is divided are used as a measure for determining the time at or within which any act is required to be done, the same may continue to be referred to for the same or the like purpose, unless and until provision is otherwise made by any lawful authority. Subject to rules of Court, the High Court of Justice and the Court of Appeal, and the judges thereof respectively, or any such commissioners as aforesaid, shall have power to sit and act, at any time, and at any place, for the transaction of any part of the

Act 1873, ss. 26, 29.

business of such Courts respectively, or of such judges or commissioners, or for the discharge of any duty which by any Act of Parliament, or otherwise, is required to be discharged during or after term.

For the Rules as to the sittings of the Court, see Order LXIII., *ante*, p. 275.

As to jurisdiction on circuit, see s. 29, *infra*.

Jurisdiction of Judges of High Court on Circuit.

29. Her Majesty, by commission of assize, or by any other commission, either general or special, may assign to any Judge or Judges of the High Court of Justice or other persons usually named in commissions of assize, the duty of trying and determining within any place or district specially fixed for that purpose by such commission, any causes or matters, or any questions or issues of fact or of law, or partly of fact and partly of law, in any cause or matter depending in the said High Court, or the exercise of any civil or criminal jurisdiction capable of being exercised by the said High Court; and any commission so granted by Her Majesty shall be of the same validity as if it were enacted in the body of this Act; and any commissioner or commissioners appointed in pursuance of this section shall, when engaged in the exercise of any jurisdiction assigned to him or them in pursuance of this Act, be deemed to constitute a Court of the said High Court of Justice; and, subject to any restrictions or conditions imposed by Rules of Court, and to the power of transfer, any party to any cause or matter involving the trial of a question or issue of fact, or partly of fact and partly of law, may, with the leave of the judge or judges to whom or to whose division the cause or matter is assigned, require the question or issue to be tried and determined by a commissioner or commissioners as aforesaid, or at sittings to be held in Middlesex or London, as hereinafter in this Act mentioned, and such question or issue shall be tried and determined accordingly.

A cause or matter not involving any question or issue of

fact may be tried and determined in like manner with the consent of all the parties thereto.

Divisions of the High Court of Justice.

31. For the more convenient despatch of business in the said High Court of Justice (but not so as to prevent any Judge from sitting whenever required in any Divisional Court, or for any Judge of a different Division from his own), there shall be in the said High Court *five* Divisions consisting of such number of Judges respectively as hereinafter mentioned. Such *five* Divisions shall respectively include, immediately on the commencement of this Act, the several Judges following; (that is to say,)

Here follow a list of what Judges the several Divisions shall consist of.

The five divisions named in this section have been reduced to three by virtue of an Order in Council dated 16th December, 1880, made under the provisions of s. 32 of this Act, viz.: the Chancery Division, the Queen's Bench Division, and the Probate Divorce and Admiralty Division.

Assignment of certain business to particular Divisions of High Court, subject to Rules.

34. There shall be assigned (subject as aforesaid) to the Chancery Division of the said Court:

Here follow the several matters assigned to the Chancery Division.

There shall be assigned (subject as aforesaid) to the Queen's Bench Division of the said Court:

(1.) All causes and matters, civil and criminal, pending in the Court of Queen's Bench at the commencement of this Act:

(2.) All causes and matters, civil and criminal, which would have been within the exclusive cognizance of the Court of Queen's Bench in the exercise of its original jurisdiction, if this Act had not passed.

There shall be assigned (subject as aforesaid) to the Common Pleas Division of the said Court:

(1.) All causes and matters pending in the Court of Common Pleas at Westminster, the Court of

Act 1873, ss. 34—0.

Common Pleas at Lancaster, and the Court of Pleas at Durham, respectively, at the commencement of this Act:

(2.) All causes and matters which would have been within the exclusive cognizance of the Court of Common Pleas at Westminster, if this Act had not passed.

There shall be assigned (subject as aforesaid) to the Exchequer Division of the said Court:

(1.) All causes and matters pending in the Court of Exchequer at the commencement of this Act;

(2.) All causes and matters which would have been within the exclusive cognizance of the Court of Exchequer, either as a Court of Revenue or as a Common Law Court, if this Act had not passed.

See note to s. 31, *ante*, p. 285.

Powers of one or more Judges not constituting a Divisional Court.

39. Any Judge of the said High Court of Justice may, subject to any Rules of Court, exercise in Court or in Chambers all or any part of the jurisdiction by this Act vested in the said High Court, in all such causes and matters, and in all such proceedings in any causes or matters, as before the passing of this Act might have been heard in Court or in Chambers respectively, by a single Judge of any of the Courts whose jurisdiction is hereby transferred to the said High Court, or as may be directed or authorised to be so heard by any Rules of Court to be hereafter made. In all such cases, any Judge sitting in Court shall be deemed to constitute a Court.

Divisional Courts of the High Court of Justice.

40. Such causes and matters as are not proper to be heard by a single Judge shall be heard by Divisional Courts of the said High Court of Justice, which shall for that purpose exercise all or any part of the jurisdiction of the said High Court. Any number of such Divisional Courts may sit at the same time. *A Divisional Court of the said High Court of Justice shall be constituted by two or three, and no more, of the Judges thereof; and, except when through*

pressure of business or any other cause it may not conveniently be found practicable, shall be composed of three such Judges. Every Judge of the said High Court shall be qualified and empowered to sit in any of such Divisional Courts. The President of every such Divisional Court of the High Court of Justice shall be the senior Judge of those present, according to the order of their precedence under this Act.

The portion of this section in italics is repealed by 46 & 47 Vict. c. 39, and the remainder of the section is practically obsolete by reason of s. 17 of the Act of 1876, *post*, p. 294, which provides for the manner in which Divisional Courts are to be constituted, and, together with Order LIX., *ante*, p. 265, defines what matters are to be heard and determined before such Courts.

Appeals from inferior Courts to be determined by Divisional Courts.

45. All appeals from Petty or Quarter Sessions, from a County Court, or from any other inferior Court, which might before the passing of this Act have been brought to any Court or Judge whose Jurisdiction is by this Act transferred to the High Court of Justice, may be heard and determined by Divisional Courts of the said High Court of Justice, consisting respectively of such of the Judges thereof as may from time to time be assigned for that purpose, pursuant to Rules of Court, or (subject to Rules of Court) as may be so assigned according to arrangements made for the purpose by the Judges of the said High Court. The determination of such appeals respectively by such Divisional Courts shall be final unless special leave to appeal from the same to the Court of Appeal shall be given by the Divisional Court by which any such appeal from an inferior Court shall have been heard.

When leave is given under this section an appeal will lie to the Court of Appeal notwithstanding s. 20 of the Appellate Jurisdiction Act, 1876, *post*, p. 293; *Crush* v. *Turner*, 3 Ex. D. 303; 47 L. J. Ex. 639, C. A.; but in respect of a criminal matter, such as a case stated by Justices on a summary conviction, leave is of no avail because of s. 47 of the Act of 1873, *post*, p. 287: *Blake* v. *Beech*, 2 Ex. D. 335; 36 L. T. 723, C. A.; *Mellor* v. *Denham*, 5 Q. B. D. 467; 48 L. J. M. C. 89, C. A.; and see further for decisions as to what are criminal matters, *ante*, p. 86.

Act 1873, ss. 45—76.

As to what proceedings come within the scope of this section, see note to Order LIX., Rule 4, *ante*, p. 267.

Provision for Crown cases reserved.

47. The jurisdiction and authorities in relation to questions of law arising in criminal trials which are now vested in the Justices of either Bench and the Barons of the Exchequer by the Act of the session of the eleventh and twelfth years of the reign of Her present Majesty, chapter seventy-eight, intituled "An Act for the further amendment of the administration of the Criminal Law," or any Act amending the same, shall and may be exercised after the commencement of this Act by the Judges of the High Court of Justice, or five of them at the least, of whom the Lord Chief Justice of England, *the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, or one of such chiefs at least, shall be part.* The determination of any such question by the judges of the said High Court in manner aforesaid shall be final and without appeal; and no appeal shall lie from any judgment of the said High Court in any criminal cause or matter, save for some error of law apparent upon the record, as to which no question shall have been reserved for the consideration of the said Judges under the said Act of the eleventh and twelfth years of Her Majesty's reign.

This section continues the practice of appeal by writ of error, which formally lay to the Court of Exchequer Chamber.

The words in italics are repealed by 46 & 47 Vict. c. 39, in consequence of an alteration effected by the Act of 1881, s. 15, but such portion of the section does not relate to the Crown side.

What orders shall not be subject to Appeal.

49. No order made by the High Court of Justice or any Judge thereof, by the consent of parties, or as to costs only, which by law are left to the discretion of the Court, shall be subject to any appeal, except by leave of the Court or Judge making such order.

As to appeals, see s. 19, *ante*, p. 282, and Rule 216, *ante*, p. 86.

76. All Acts of Parliament relating to the several Courts and Judges, whose jurisdiction is hereby transferred to the

said High Court of Justice and the said Court of Appeal respectively, or wherein any of such Courts or Judges are mentioned or referred to, shall be construed and take effect, so far as relates to anything done or to be done after the commencement of this Act, as if the said High Court of Justice or the said Court of Appeal, and the Judges thereof, respectively, as the case may be, had been named therein instead of such Courts or Judges whose jurisdiction is so transferred respectively; and in all cases not hereby expressly provided for in which, under any such Act, the concurrence or the advice or consent of the Judge or any Judges, or of any number of the Judges, of any one or more of the Courts whose jurisdiction is hereby transferred to the High Court of Justice is made necessary to the exercise of any power or authority capable of being exercised after the commencement of this Act, such power or authority may be exercised by and with the concurrence, advice, or consent of the same or a like number of Judges of the said High Court of Justice; and all general and other commissions, issued under the Acts relating to the Central Criminal Court or otherwise, by virtue whereof any Judges of any of the Courts whose jurisdiction is so transferred may, at the commencement of this Act, be empowered to try, hear, or determine any causes or matters, criminal or civil, shall remain and be in full force and effect, unless and until they shall respectively be in due course of law revoked or altered.

Acts of Parliament relating to former Courts to be read as applying to Courts under this Act.

100. In the construction of this Act, unless there is anything in the subject or context repugnant thereto, the several words hereinafter mentioned shall have, or include, the meanings following (that is to say):

Interpretation of terms.

"Lord Chancellor" shall include Lord Keeper of the Great Seal.

"The High Court of Chancery" shall include the Lord Chancellor.

"The Court of Appeal in Chancery" shall include

Act 1873. s. 100.

the Lord Chancellor as a Judge on rehearing or appeal.

"London Court of Bankruptcy" shall include the Chief Judge in Bankruptcy.

"The Treasury" shall mean the Commissioners of Her Majesty's Treasury for the time being, or any two of them.

"Rules of Court" shall include forms.

"Cause" shall include any action, suit, or other original proceeding between a plaintiff and a defendant, and any criminal proceeding by the Crown.

"Suit" shall include action.

"Action" shall mean a civil proceeding commenced by writ, or in such other manner as may be prescribed by rules of court; and shall not include a criminal proceeding by the Crown.

"Plaintiff" shall include every person asking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding, whether the same be taken by action, suit, petition, motion, summons, or otherwise.

"Petitioner" shall include every person making any application to the Court, either by petition, motion, or summons, otherwise than as against any defendant.

"Defendant" shall include every person served with any writ of summons or process, or served with notice of, or entitled to attend any proceedings.

"Party" shall include every person served with notice of, or attending any proceeding, although not named on the record.

"Matter" shall include every proceeding in the Court not in a cause.

"Pleading" shall include any petition or summons, and also shall include the statements in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any counter-claim of a defendant.

Act 1873, s. 100.

"Judgment" shall include decree.

"Order" shall include rule.

"Oath" shall include solemn affirmation and statutory declaration.

"Crown cases reserved" shall mean such questions of law reserved in criminal trials as are mentioned in the Act of the eleventh and twelfth years of Her Majesty's reign, chapter seventy-eight.

"Pension" shall include retirement and superannuation allowance.

"Existing" shall mean existing at the time appointed for the commencement of this Act.

See also r. 306, *ante*, p. 163.

Act 1875, ss. 12—19.

Supreme Court of Judicature Act, 1875.
(38 & 39 Vict. c. 77.)

Sittings of Court of Appeal.

12. Every appeal to the Court of Appeal shall, where the subject-matter of the appeal is a final order, decree, or judgment, be heard before not less than three Judges of the said Court sitting together, and shall, when the subject-matter of the appeal is an interlocutory order, decree, or judgment, be heard before not less than two Judges of the said Court sitting together.

Any doubt which may arise as to what decrees, orders, or judgments are final, and what are interlocutory, shall be determined by the Court of Appeal.

Subject to the provisions contained in this section the Court of Appeal may sit in two divisions at the same time.

As to distinction between interlocutory and final, see note to O. LVIII. r. 3, *ante*, p. 89.

Appeal from inferior court of record.

15. It will be lawful for Her Majesty from time to time, by Order in Council, to direct that the enactments relating to appeals from county courts shall apply to any other inferior Court of record; and those enactments, subject to any exceptions, conditions, and limitations contained in the order, shall apply accordingly, as from the date mentioned in the order.

Provision as to criminal procedure, subject to future Rules remaining unaltered, —in substitution for 36 & 37 Vict. c. 66, s. 71.

19. Subject to *the First Schedule hereto and* any Rules of Court to be made under this Act, the practice and procedure in all criminal causes and matters whatsoever in the High Court of Justice and in the Court of Appeal respectively, including the practice and procedure with respect to Crown cases reserved, shall be the same as the practice and procedure in similar causes and matters before the commencement of this Act.

The words in italics are repealed by 46 & 47 Vict. c. 39.

Appellate Jurisdiction Act, 1876.

(39 & 40 Vict. c. 59.)

Act 1876, ss. 3—11.

Appeal.

Cases in which appeal lies to House of Lords.

3. Subject as in this Act mentioned an appeal shall lie to the House of Lords, from any order or judgment of any of the Courts following; that is to say—

(1.) Of Her Majesty's Court of Appeal in England; and

(2.) Of any Court in Scotland from which error or an appeal at or immediately before the commencement of this Act lay to the House of Lords by common law or by statute; and

(3.) Of any Court in Ireland from which error or an appeal at or immediately before the commencement of this Act lay to the House of Lords by common law or by statute.

Form of appeal to House of Lords.

4. Every appeal shall be brought by way of petition to the House of Lords, praying that the matter of the order or judgment appealed against may be reviewed before Her Majesty the Queen in her Court of Parliament, in order that the said Court may determine what of right, and according to the law and custom of this realm, ought to be done in the subject-matter of such appeal.

Saving as to fiat of Attorney-General.

10. An appeal shall not be entertained by the House of Lords without the consent of the Attorney-General or other law officer of the Crown in any case where proceedings in error or on appeal could not hitherto have been had in the House of Lords without the fiat or consent of such officer.

Procedure under Act to supersede all

11. After the commencement of this Act error shall not lie to the House of Lords, and an appeal shall not lie from any of the Courts from which an appeal to the House of

Act 1876, ss. 11, 17. other procedure.

Lords is given by this Act, except in manner provided by this Act, and subject to such conditions as to the value of the subject-matter in dispute, and as to giving security for costs, and as to the time within which the appeal shall be brought, and generally as to all matters of practice and procedure, or otherwise, as may be imposed by orders of the House of Lords.

See Rules 179, 199, *ante*, pp. 75, 80, as to bail pending appeal to the House of Lords.

Regulations as to business of High Court of Justice and Divisional Courts of High Court.

17. On and after the first day of December, one thousand eight hundred and seventy-six, every action and proceeding in the High Court of Justice, and all business arising out of the same, except as hereinafter provided, shall, so far as is practicable and convenient, be heard, determined, and disposed of before a single Judge, and all proceedings in an action subsequent to the hearing or trial, and down to and including the final judgment or order, except as aforesaid, and always excepting any proceedings on appeal in the Court of Appeal, shall, so far as is practicable and convenient, be had and taken before the Judge before whom the trial or hearing of the cause took place: Provided nevertheless, that Divisional Courts of the High Court of Justice may be held for the transaction of any business which may for the time being be ordered by Rules of Court to be heard by a Divisional Court; and any such Divisional Court when held shall be constituted of two Judges of the Court, and no more, unless the President of the Division to which such Divisional Court belongs, with the concurrence of the other Judges of such Division, or a majority thereof, is of opinion that such Divisional Court should be constituted of a greater number of Judges than two, in which case such Court may be constituted of such number of Judges as the President, with such concurrence as aforesaid, may think expedient; nevertheless the decisions of a Divisional Court shall not be invalidated by reason of such Court being constituted of a greater number than two Judges; and

Act 1876, ss. 17, 20.

Rules of Court for carrying into effect the enactments contained in this section shall be made on or before the first day of December, one thousand eight hundred and seventy-six, and may be afterwards altered, and all Rules of Court to be made after the passing of this Act, whether made under "The Supreme Court of Judicature Act, 1875," or this Act, shall be made by *any three or more of* the following persons, *of whom the Lord Chancellor shall be one, namely, the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, and four other Judges of the Supreme Court of Judicature, to be from time to time appointed for the purpose by the Lord Chancellor in writing under his hand, such appointment to continue for such time as shall be specified therein,* and all such Rules of Court shall be laid before each House of Parliament within such time, and subject to be annulled in such manner as is provided by "The Supreme Court of Judicature Act, 1875."

See now Jud. Act. 1881, s. 19.

The words in italics, and the last paragraph, not here inserted, are repealed by the S. L. R. Act, 1883 (46 & 47 Vict. c. 39), and the provisions as to Divisional Courts amended by the Judicature Act, 1884, s. 4, *post*, p. 296.

The power of making Rules is extended by Statute Law Revision and Civil Procedure Act, 1881 (44 & 45 Vict. c. 59), to proceedings by or against the Crown.

See further as to Divisional Courts, Order LIX., *ante*, p. 265.

Amendment of Judicature Acts as to appeals from High Court of Justice in certain cases.

20. Where by Act of Parliament it is provided that the decision of any Court or Judge, the jurisdiction of which Court or Judge is transferred to the High Court of Justice, is to be final, an appeal shall not lie in any such case from the decision of the High Court of Justice, or of any Judge thereof, to Her Majesty's Court of Appeal.

This section does not affect appeals from inferior Courts mentioned in s. 45 of the Act of 1873 ; *Crush* v. *Turner*, 3 Ex. D. 303, C. A. ; and see note to that section, *ante*, p. 287.

Act 1884, ss. 4—23.

Supreme Court of Judicature Act, 1884.
(47 & 48 Vict. c. 61.)

Amendment of 39 & 40 Vict. c. 39, s. 17.

4. A Divisional Court of the Queen's Bench Division of the High Court of Justice may at any time be constituted of more than two Judges if the President of the said Division, with the concurrence of not less than two other Judges thereof, shall be of opinion that it is expedient so to constitute the same.

Appeals from referees. 36 & 37 Vict. c. 66.

8. The provisions of Section forty-five of the Supreme Court of Judicature Act, 1873, as to certain appeals therein mentioned shall extend and apply to all appeals brought after the commencement of this Act from any award or certificate of a referee or arbitrator when there has been a compulsory reference to arbitration in any cause or matter in the Queen's Bench Division of the High Court of Justice.

See O. LIX. r. 3, *ante*, p. 266.

Quo Warranto.

15. Proceedings in *Quo Warranto* shall be deemed to be civil proceedings, whether for purposes of appeal or otherwise.

Power to make rules.

23. The power to make rules conferred by section 17 of the Supreme Court of Judicature Act, 1875, and enactments amending the same, shall be deemed to include the power to make rules for regulating the procedure on appeals from inferior Courts to the High Court.

Rules made in pursuance of this section have been incorporated, and form part of Order LIX., namely, Rules 7 to 17, *ante*, pp. 269—273.

The Mayor's Court of London Procedure Act, 1857.
(20 & 21 Vict. cap. clvii.).

Appeal from Mayor's Court to superior Courts at Westminster.

8. If either party appearing on the trial of any cause in which the sum sought to be recovered shall exceed the sum of 20*l.* shall be dissatisfied with the determination or direction of the Court in point of law, or upon the admission or rejection of any evidence, such party may appeal from the same to any one of the Superior Courts (two or more of the puisne Judges or Barons thereof shall sit out of term as a Court of Appeal for that purpose); provided that such party shall, within two days after such determination or direction, give notice of appeal to the other party or his attorney, and also give security within such time or times as the Court shall direct, to be approved of by the Registrar of the Court (if the Judge shall so direct), for the costs of the appeal, whatever be the event of the appeal, and for the amount of the judgment, if he be the defendant and the appeal be dismissed. Provided nevertheless, that such security, so far as regards the amount of the judgment, shall not be required in any case where the Judge of the Court shall have ordered the party appealing to pay the amount of such judgment into the hands of the registrar, and the same shall have been paid accordingly; and the said Court of Appeal may either order a new trial on such terms as it shall think fit, or may order judgment to be entered for either party, as the case may be, and may make such order with respect to the costs of the said appeal as such Court may think proper, and such orders shall be final.

Security to be given if Court so direct.

This section is considerably modified by sect. 45 of the Judicature Act, 1873, p. 287, and by O. LIX., r. 9, *ante*, p. 270, and the subsequent Rules of that Order.

Appeal to be in form of case.

9. Such appeal shall be in the form of a case agreed on by both parties, or their attorneys, and if they cannot agree, the Judge of the Court, upon being applied

to by them or their attorneys, shall settle the case, and sign it, and such case shall be transmitted by the registrar to the Rule Department of the Master's Office of the Court in which the appeal is to be brought.

This section would appear to be repealed by reason of Rule 10 of Order LIX., *ante*, p. 270.

Rules to set aside or enter verdict, &c., may be moved before any of the Courts at Westminster if Mayor's Court shall grant leave.

10. If upon the trial of any issue the Judge shall grant leave to the plaintiff or defendant to move in any of the Superior Courts to set aside a verdict or a nonsuit, and to enter a verdict for the plaintiff or defendant, or to enter a nonsuit, as the case may be, or for a new trial, the party to whom such leave may have been given may apply by motion to such Superior Court, within such period of time after the trial as motions of the like kind shall from time to time be permitted to be made in such Superior Court, for a rule to show cause why such verdict or nonsuit should not be set aside, and a verdict entered for the plaintiff or defendant, or a nonsuit entered, or why a new trial should not be had, as the case may be, in such action; which Court is hereby authorized and empowered to grant or refuse such rule (which rule, when granted, shall operate as a stay of proceedings until the determination thereof), and afterwards to proceed to hear and determine the merits thereof, and to make such orders thereupon, and as to costs, as the same Court shall think proper; and in case such Court shall order a new trial to be had in any such action, the party obtaining such order shall deliver the same, or an office copy thereof, to the registrar of the said Court, and thereupon all the proceedings on the former verdict or nonsuit shall cease, and the action shall proceed to trial, according to the practice of the Court, in like manner as if no trial had been had therein; or in case the Court before whom such rule shall be heard shall order the same to be discharged, the party obtaining any such order may, upon delivering the same, or an office copy thereof, to the registrar, be at liberty to proceed in any such action as if no

such rule *nisi* had been obtained; and if a verdict be ordered to be entered for the plaintiff or defendant, or a nonsuit be ordered to be entered, as the case may be, judgment shall be entered accordingly.

An appeal from a judgment of the Mayor's Court of London upon a question of law arising upon the record lies direct to the Court of Appeal: *Le Blanch* v. *Reuter's Telegraph Co.*, 1 Ex. D. 408; *Pryor* v. *City Offices Co.*, 10 Q. B. D. 504, C. A.; but an appeal under the foregoing sections is to the Divisional Court under O. LIX., Rule 4: *Appleford* v. *Judkins*, 3 C. P. D. 489, C. A.

The Liverpool Court of Passage Procedure Act, 1853.

(16 Vict. cap. xxi.)

Rules to set aside or enter verdict, &c., may be moved before any of the Courts at Westminster if Assessor shall grant leave.

45. If upon the trial of any issue the assessor shall grant leave to the plaintiff or defendant to move, in any one of the Superior Courts of Common Law at Westminster, to set aside a verdict or a nonsuit, and to enter a verdict for the plaintiff or defendant, or to enter a nonsuit, as the case may be, or for a new trial, the party to whom such leave may have been given may apply by motion to such Superior Court, within such period of time after the trial as motions of the like kind shall from time to time be permitted to be made in such Superior Court, for a rule to show cause why such verdict or nonsuit should not be set aside, and a verdict entered for the plaintiff or defendant, or a nonsuit entered, or why a new trial should not be had, as the case may be, in such action; which Court is hereby authorized and empowered to grant or refuse such rule (which rule, when granted, shall operate as a stay of proceedings until the determination thereof), and afterwards to proceed to hear and determine the merits thereof, and to make such orders thereupon and as to costs as the same Court shall think proper; and in case such Court shall order a new trial to be had in any such action, the party obtaining such order shall deliver the same, or an office copy thereof, to the registrar of the said Court, and thereupon

all the proceedings on the former verdict or nonsuit shall cease, and the action shall proceed to trial, according to the practice of the Court, in like manner as if no trial had been had therein; or in case the Court before whom such rule shall be heard shall order the same to be discharged, the party obtaining any such order may, upon delivering the same, or an office copy thereof, to the said registrar, be at liberty to proceed in any such action as if no such rule *nisi* had been obtained; and if a verdict be ordered to be entered for the plaintiff or defendant, or a nonsuit be ordered to be entered, as the case may be, judgment shall be entered accordingly.

See notes to the sections of the Mayor's Court Act, *ante*.

Provisions of 15 & 16 Vict. c. 76, as to proceedings in error to apply to this Act.

47. All the provisions with respect to proceedings in error, which are contained in the sections of "The Common Law Procedure Act, 1852," numbered one hundred and forty-six, one hundred and forty-seven, one hundred and forty-eight, one hundred and forty-nine, one hundred and fifty, one hundred and fifty-one, one hundred and fifty-two, one hundred and fifty-three, one hundred and fifty-four, one hundred and fifty-five, one hundred and fifty-six, one hundred and fifty-seven, one hundred and fifty-eight, one hundred and fifty-nine, one hundred and sixty, one hundred and sixty-one, one hundred and sixty-two, one hundred and sixty-three, one hundred and sixty-four, one hundred and sixty-five, one hundred and sixty-six, one hundred and sixty-seven, in the Queen's Printer's copies of the said Act, shall extend and apply to the said Court: Provided always, that error may be brought in any of Her Majesty's Superior Courts of Common Law at Westminster, and that it shall not be necessary to bring the judgment roll into the Superior Court in which error shall be brought, as required and provided by the said section numbered one hundred and fifty-five in the Queen's Printer's said copies, but it shall be sufficient in the place thereof to transmit to the said Superior Court a transcript

of the record of any judgment or proceeding in the said Court on which error is alleged, and that the judgment of the said Superior Court thereon shall be certified by the proper officer of the said Superior Court, or by Rule of Court, as the said Superior Court may direct, and thereupon such judgment shall be entered on the original record in the said Court, and such further proceedings as may be necessary thereon shall be awarded by the said Court, subject to the right of either party to allege errors in the said judgment in the said Superior Court, and proceed thereon as provided by the said "Common Law Procedure Act, 1852," in the case of errors alleged in actions depending in such Superior Court.

See note to O. LIX., r. 10, *ante*, p. 270.

The Salford Hundred Court of Record Act, 1868.

(31 & 32 Vict. cap. cxxx.)

And as to Granting New Trials, Entering Nonsuits, &c.

89. If upon the trial of any issue the Judge shall grant leave to the plaintiff or defendant to move in any one of the Superior Courts to set aside a verdict or nonsuit, and to enter a verdict for the plaintiff or defendant, or to enter a nonsuit or to arrest the judgment, or for judgment *non obstante veredicto*, as the case may be, or for a new trial, the party to whom such leave may have been given may apply by motion to such Superior Court within such period of time as the Judge shall then appoint for a rule to show cause why such verdict or nonsuit should not be set aside, and a verdict entered for the plaintiff or defendant, or a nonsuit entered, or the judgment arrested, or judgment *non obstante veredicto* entered, or why a new trial should not be had, as the case may be, in such action, which Superior Court is hereby authorized and empowered to grant or refuse such rule (which rule, when granted, shall operate as

Rules to enter verdict, &c., may be moved before any of the Courts at Westminster by leave.

a stay of proceedings until the determination thereof), and afterwards to proceed to hear and determine the merits thereof, and to make such orders thereupon and as to the costs as the same Court shall think proper; and in case such Court shall order a new trial to be had in any such action, the party obtaining such order shall deliver the same, or an office copy thereof, to the registrar, and thereupon all the proceedings on the former verdict or nonsuit shall cease, and the action shall proceed to trial according to the practice of the Court, in like manner as if no trial had been had therein; or in case the Court before whom such rule shall be heard shall order the same to be discharged, the party obtaining any such order may, upon delivering the same, or an office copy thereof, to the registrar, be at liberty to proceed in any such action as if no such rule *nisi* had been obtained; and if a verdict be ordered to be entered for the plaintiff or defendant, or a nonsuit be ordered, or judgment be ordered to be arrested, or judgment *non obstante veredicto* be ordered to be entered, as the case may be, judgment shall be entered accordingly; and the proceedings to set aside the verdict and order a new trial to be had, or to enter a verdict for either party, according to leave reserved at the trial, shall be the same as in ordinary cases.

See notes to the sections of the Mayor's Court Act, *ante*.

New trials may be moved for in the Superior Courts on certain conditions.

91. It shall be lawful for any party to any suit in the Court who shall be dissatisfied with any verdict or judgment given or any nonsuit entered against him in any action which shall have been tried in the Court to apply, within one month next after such verdict or judgment given or nonsuit entered, to any of the Superior Courts, or to any Judge of any of the said Courts, for a rule to show cause why a new trial of such action should not be granted, or nonsuit set aside and a new trial granted, or a verdict entered, or judgment for the plaintiff or defendant, or a

nonsuit entered, as the case may be, in the same manner as is customary in actions depending in the Superior Courts and tried at *nisi prius* before any Judge of Assize by virtue of any record in any of the Superior Courts, and thereupon it shall be lawful for any of the Superior Courts, or any Judge of one of the Superior Courts, to grant such rule, and to hear and determine the merits of the same in like manner as in actions depending in the Superior Courts and tried as aforesaid; and in case any of the Superior Courts, or any Judge of one of the Superior Courts, shall make the rule absolute (which they are severally empowered to do upon such terms as they shall respectively think reasonable), then on delivery of an office copy of such rule by the party who shall have obtained the same to the registrar all proceedings upon the former verdict, judgment, or nonsuit so obtained in the Court shall cease, and the said action shall proceed anew to a trial in the Court, or a verdict or judgment for the plaintiff or defendant or a nonsuit shall be entered according to the tenor of such absolute rule: Provided always, that it shall not be lawful for any party to move for any such rule, nor shall any such rule be of any force, unless and until the party intending to apply for such rule shall become bound by recognizance, with two sufficient sureties to be approved by the registrar, in such reasonable sums as he shall deem sufficient for the security of the party against whom such Rule is to be applied for, that the party intending to apply for such Rule will, in case such Rule is not granted, or in case it be granted and not made absolute, pay the debt, damages, and costs, or the damages and costs, or costs, as the case may be, adjudged or to be adjudged, and all costs incurred by the other party in showing cause against the Rule; provided that no proceedings upon such verdict, judgment, or nonsuit shall be stayed, where such application is not made by leave of the Judge, until such security shall have been given, but the giving of such security shall operate as a stay of proceedings until the expiration of the said month, and until the decision of the Rule, in case such

Rule to show cause be granted within such month, but when the application shall be made by leave of the Judge such leave shall operate as a stay of proceedings for one month.

See notes to sections of the Mayor's Court Act, *ante*.

And as to Proceedings in Error.

Provisions of 15 & 16 Vict. c. 76, as to proceedings in error extended to the Court.

92. All the provisions with respect to proceedings in error which are contained in the sections of "The Common Law Procedure Act, 1852," numbered 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, and 167 in the Queen's Printer's copies of the said Act, shall extend and apply to the Court: Provided always, that error may be brought in any of Her Majesty's Superior Courts, and that it shall not be necessary to bring the judgment roll into the Superior Court in which error shall be brought as required and provided by the said section numbered 155 in the Queen's Printer's said copies, but it shall be sufficient in the place thereof to transmit to the Superior Court a transcript of the record of any judgment or proceeding in the Court on which error is alleged, and that the judgment of the Superior Court thereon shall be certified by the proper officer of the Superior Court, or by rule of Court, as the Superior Court may direct, and thereupon such judgment shall be entered on the original record in the Court, and such further proceedings as may be necessary thereon shall be awarded by the Court, subject to the right of either party to allege errors in the said judgment in the Superior Court, and proceed thereon as provided by "The Common Law Procedure Act, 1852," in the case of errors alleged in actions depending in such Superior Court.

Proviso.

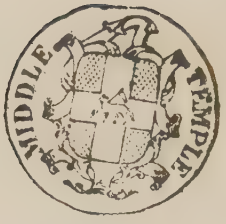
See note to O. LIX., r. 10, *ante*, p. 270.

No execution shall be stayed

93. No execution shall be stayed or delayed upon or by any writ of error, or *supersedeas* thereon, to be sued

for the reversing of any judgment given in the Court, unless the person or persons in whose name such writ shall be brought shall become bound by recognizance with two sufficient sureties, to be approved by the registrar, in such reasonable sums and in such manner as the registrar shall deem sufficient for the security of the other party, to prosecute the said writ with effect, and if the said judgment be affirmed, or the said writ be not proceeded in, to satisfy and pay the amount of such judgment, and all costs and damages sustained by the delaying of execution, and all costs of error: Provided always, that a Judge of any of the Superior Courts may order execution to be stayed upon any such judgment by a writ of error returnable in any Superior Court without such security as aforesaid.

by writ of error, except on certain conditions.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